

By the Committees on Rules; and Innovation, Industry, and Technology

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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

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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.

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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

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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. The term does not include the mere
113 possession of a vapor-generating electronic device.

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

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117 a device.

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

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

134 ~~(13) "Membership association" means a charitable,~~
135 ~~nonprofit, or veterans' organization that holds a current~~
136 ~~exemption under s. 501(c) (3), (4), (7), (8), (10), or (19) or s.~~
137 ~~501(d) of the Internal Revenue Code.~~

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

140 386.204 Prohibition.—A person may not smoke or vape in an
141 enclosed indoor workplace, except as otherwise provided in s.
142 386.2045.

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

145 386.2045 Enclosed indoor workplaces; specific exceptions.—

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146 Notwithstanding s. 386.204, tobacco smoking or vaping, or both,
147 may be authorized ~~permitted~~ in each of the following places:

148 (1) ~~Private residence.~~—A private residence whenever it is
149 not being used commercially to provide child care, adult care,
150 or health care, or any combination thereof as defined in s.
151 386.203(1).

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

156 (3) A retail vape shop.

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

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

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

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

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175 contained in s. 386.205.

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

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

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

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

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

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

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204 (5) Each customs smoking room must comply with the signage
205 requirements in s. 386.206.

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

208 386.206 Posting of signs; requiring policies.—

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

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

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

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

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

244 386.207 Administration; enforcement; civil penalties.—

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

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

261 (3) The department or the Division of Hotels and

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

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

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

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

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291 Jurisdiction shall be with the appropriate county court.

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

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

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

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

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

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

318 (1) It is unlawful for any person under 18 years of age to
319 smoke tobacco or vape in, on, or within 1,000 feet of the real

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

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

328 (a) The date and time of issuance.

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

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

331 (d) The statute violated.

332 (e) The facts constituting the violation.

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

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

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

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

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

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

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349 the court.

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

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

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

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

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

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

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

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

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

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

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

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

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407 reasonably approximates the retail value of the food.

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

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

420 (6) The Division of Alcoholic Beverages and Tobacco shall
421 have the power to enforce ~~the provisions of~~ part II of chapter
422 386 and to audit a licensed vendor that operates a business that
423 meets the definition of a stand-alone bar ~~as provided in s.~~
424 386.203 ~~s. 386.203(11)~~ for compliance with this section.

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

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

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

435 (c) For the third or subsequent violation within 2 years

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436 after the first violation, the vendor shall receive a suspension
437 of the right to maintain a stand-alone bar in which tobacco
438 smoking or vaping, or both, are authorized ~~is permitted~~, not to
439 exceed 30 days, and shall be subject to a fine of not less than
440 \$500 or more than \$2,000; and

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

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

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