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HB 0063A, Engrossed 1

2003 Legislature

A bill to be entitled

An act relating to the Florida Clean Indoor Air Act; implementing s. 20, Art. X of the State Constitution; amending s. 386.201, F.S., providing a popular name; amending s. 386.202, F.S.; providing legislative intent; amending s. 386.203, F.S.; providing definitions; amending s. 386.204, F.S.; prohibiting smoking in an enclosed indoor workplace; creating s. 386.2045, F.S.; establishing specific exceptions to the prohibition against smoking in an enclosed indoor workplace; amending s. 386.205, F.S.; providing for designated customs smoking rooms in airport in-transit lounges; providing requirements with respect thereto; amending s. 386.206, F.S.; providing for continuation of requirements with respect to the posting of signs stating that smoking is not permitted in an enclosed indoor workplace; requiring the proprietor or person in charge of an enclosed indoor workplace to develop and implement a policy regarding smoking prohibitions; providing requirements with respect to posting of signs at an airport terminal that includes a designated customs smoking room and an enclosed indoor workplace where a smoking cessation program or medical or scientific research is conducted or performed; providing for expiration of such provisions; amending s. 386.207, F.S.; providing for enforcement of the Florida Clean Indoor Act by the Department of Health, the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, and the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation; increasing penalties; eliminating



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exemptions; amending s. 386.208, F.S.; providing penalties; reenacting s. 386.209, F.S., which preempts regulation of smoking to the state; amending s. 386.211, F.S., relating to public announcements in mass transportation terminals, to conform; reenacting and amending s. 386.212, F.S., which prohibits any person under 18 years of age from smoking tobacco in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school and provides penalties therefor; creating s. 386.2125, F.S.; requiring the Department of Health and the Department of Business and Professional Regulation to adopt rules; creating s. 561.695, F.S.; providing for designation of stand-alone bars by the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation; providing procedure, requirements, and restrictions with respect to such designation; providing for rulemaking; providing for enforcement; providing penalties; providing severability; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session of the Legislature; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 386.201, Florida Statutes, is amended to read:

386.201 Popular name ~~Short title~~.--This part may be cited by the popular name ~~as~~ the "Florida Clean Indoor Air Act."

Section 2. Section 386.202, Florida Statutes, is amended



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to read:

386.202 Legislative intent.--The purpose of this part is to protect people from the public health hazards of second-hand, ~~comfort, and environment by creating areas in public places and at public meetings that are reasonably free from tobacco smoke~~ and to implement the Florida health initiative in s. 20, Art. X of the State Constitution by providing a uniform statewide maximum code. It is the intent of the Legislature to not inhibit, or otherwise obstruct, medical or scientific research or smoking-cessation programs approved by the Department of Health. ~~This part shall not be interpreted to require the designation of smoking areas. However, it is the intent of the Legislature to discourage the designation of any area within a government building as a smoking area.~~

Section 3. Section 386.203, Florida Statutes, is amended to read:

386.203 Definitions.--As used in this part:

(1) "Commercial" use of a private residence means any time during which the owner, lessee, or other person occupying or controlling the use of the private residence is furnishing in the private residence, or causing or allowing to be furnished in the private residence, child care, adult care, or health care, or any combination thereof, and receiving or expecting to receive compensation therefor.

(2) "Common area" means a hallway, corridor, lobby, aisle, water fountain area, restroom, stairwell, entryway, or conference room in a customs area of an airport terminal under the authority and control of the Bureau of Customs and Border Protection of the United States Department of Homeland Security.

(3) "Department" means the Department of Health.



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(4) "Designated smoking guest rooms at public lodging establishments" means the sleeping rooms and directly associated private areas, such as bathrooms, living rooms, and kitchen areas, if any, rented to guests for their exclusive transient occupancy in public lodging establishments, including hotels, motels, resort condominiums, transient apartments, transient lodging establishments, rooming houses, boarding houses, resort dwellings, bed and breakfast inns, and the like; and designated by the person or persons having management authority over such public lodging establishment as rooms in which smoking may be permitted.

(5) "Enclosed indoor workplace" means 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, regardless of whether such barriers consist of or include, without limitation, uncovered openings, screened or otherwise partially covered openings; or open or closed windows, jalousies, doors, or the like. A place is "predominantly" bounded by physical barriers during any time when both of the following conditions exist:

(a) It is more than 50 percent covered from above by a physical barrier that excludes rain, and

(b) More than 50 percent of the combined surface area of its sides is covered by closed physical barriers. In calculating the percentage of side surface area covered by closed physical barriers, all solid surfaces that block air flow, except railings, must be considered as closed physical barriers. This section applies to all such enclosed indoor workplaces and enclosed parts thereof without regard to whether work is occurring at any given time.



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

(6) "Essential services" means those services that are essential to the maintenance of any enclosed indoor room, including, but not limited to, janitorial services, repairs, or renovations.

(7) "Physical barrier" includes an uncovered opening, a screened or otherwise partially covered opening, or an open or closed window, jalousie, or door.

(8) "Retail tobacco shop" means any enclosed indoor workplace dedicated to or predominantly for the retail sale of tobacco, tobacco products, and accessories for such products, in which the sale of other products or services is merely incidental. Any enclosed indoor workplace of a business that manufactures, imports, or distributes tobacco products or of a tobacco leaf dealer is a business dedicated to or predominantly for the retail sale of tobacco and tobacco products when, as a necessary and integral part of the process of making, manufacturing, importing, or distributing a tobacco product for the eventual retail sale of such tobacco or tobacco product, tobacco is heated, burned, or smoked or a lighted tobacco product is tested.

(9) "Second-hand smoke," also known as environmental tobacco smoke (ETS), means smoke emitted from lighted, smoldering, or burning tobacco when the smoker is not inhaling; smoke emitted at the mouthpiece during puff drawing; and smoke exhaled by the smoker.



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(10)(4) "Smoking" means inhaling, exhaling, burning, carrying, or possessing any possession of a lighted tobacco product, including cigarettes, cigars, pipe tobacco, and cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.

(11) "Stand-alone bar" means any licensed premises devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises; in which the serving of food, if any, is merely incidental to the consumption of any such beverage; and the licensed premises is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace, including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue. A place of business constitutes a stand-alone bar in which the service of food is merely incidental in accordance with this subsection if the licensed premises derives no more than 10 percent of its gross revenue from the sale of food consumed on the licensed premises.

(12) "Work" means any person's 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. "Work" includes, without limitation, any such service performed by an employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant, volunteer, and the like. The term does not include noncommercial activities performed by members of a membership association.



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

~~(1) "Public place" means the following enclosed, indoor areas used by the general public:~~

~~(a) Government buildings;~~

~~(b) Public means of mass transportation and their associated terminals not subject to federal smoking regulation;~~

~~(c) Elevators;~~

~~(d) Hospitals;~~

~~(e) Nursing homes;~~

~~(f) Educational facilities;~~

~~(g) Public school buses;~~

~~(h) Libraries;~~

~~(i) Courtrooms;~~

~~(j) Jury waiting and deliberation rooms;~~

~~(k) Museums;~~

~~(l) Theaters;~~

~~(m) Auditoriums;~~

~~(n) Arenas;~~

~~(o) Recreational facilities;~~

~~(p) Restaurants;~~

~~(q) Retail stores, except a retail store the primary business of which is the sale of tobacco or tobacco related products;~~

~~(r) Grocery stores;~~

~~(s) Places of employment;~~

~~(t) Health care facilities;~~



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~~(u) Day care centers; and~~

~~(v) Common areas of retirement homes and condominiums.~~

~~(2) "Government building" means any building or any portion of any building owned by or leased to the state or any political subdivision thereof and used for governmental purposes.~~

~~(3) "Public meeting" means all meetings open to the public, including meetings of homeowner, condominium, or renter or tenant associations unless such meetings are held in a private residence.~~

~~(5) "Smoking area" means any designated area meeting the requirements of ss. 386.205 and 386.206.~~

~~(6) "Common area" means any hallway, corridor, lobby, aisle, water fountain area, restroom, stairwell, entryway, or conference room in any public place.~~

~~(7) "Department" means the Department of Health.~~

~~(8) "Division" means the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.~~

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

386.204 Prohibition.--A person may not smoke in an enclosed indoor workplace, except as otherwise provided in s. 386.2045 ~~a public place or at a public meeting except in designated smoking areas. These prohibitions do not apply in cases in which an entire room or hall is used for a private function and seating arrangements are under the control of the sponsor of the function and not of the proprietor or person in charge of the room or hall.~~

Section 5. Section 386.2045, Florida Statutes, is created



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to read:

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386.2045 Enclosed indoor workplaces; specific exceptions.--Notwithstanding s. 386.204, tobacco smoking may be permitted in each of the following places:

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

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

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

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

(5) SMOKING-CESSATION PROGRAM, MEDICAL OR SCIENTIFIC RESEARCH.--An enclosed indoor workplace, to the extent that tobacco smoking is an integral part of a smoking-cessation program approved by the department, or medical or scientific research conducted therein. Each room in which tobacco smoking is permitted must comply with the signage requirements in s. 386.206.

(6) CUSTOMS SMOKING ROOM.--A customs smoking room 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 Security subject to the restrictions



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contained in s. 386.205.

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

386.205 Customs ~~Designation of~~ smoking rooms ~~areas~~.--

(1) A customs smoking room ~~areas~~ may be 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 public place~~. A customs smoking room may only be designated 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 Security. A customs smoking room may not be designated in an elevator, restroom, or any common area as defined by s. 386.203. Each customs smoking room must conform to the following requirements:

(a) Work, other than essential services defined in s. 386.203(6), must not be performed in the room at any given time.

(b) Tobacco smoking must not be permitted in the room while any essential services are being performed in the room.

(c) Each customs smoking room must be enclosed by physical barriers that are impenetrable by second-hand tobacco smoke and prevent the escape of second-hand tobacco smoke into the enclosed indoor workplace.

(d) Each customs smoking room must exhaust tobacco smoke directly to the outside and away from air intake ducts, and be maintained under negative pressure, with respect to surrounding spaces, sufficient to contain tobacco smoke within the room.

(e) Each customs smoking room must comply with the signage requirements in s. 386.206. ~~If a smoking area is designated, existing physical barriers and ventilation systems shall be used~~



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~~to minimize smoke in adjacent nonsmoking areas. This provision shall not be construed to require fixed structural or other physical modifications in providing these areas or to require operation of any existing heating, ventilating, and air-conditioning system (HVAC system) in any manner which decreases its energy efficiency or increases its electrical demand, or both, nor shall this provision be construed to require installation of new or additional HVAC systems.~~

~~(2)(a) A smoking area may not be designated in an elevator, school bus, public means of mass transportation subject only to state smoking regulation, restroom, hospital, doctor's or dentist's waiting room, jury deliberation room, county health department, day care center, school or other educational facility, or any common area as defined in s. 386.203. However, a patient's room in a hospital, nursing home, or other health care facility may be designated as a smoking area if such designation is ordered by the attending physician and agreed to by all patients assigned to that room.~~

~~(b) Notwithstanding anything in this part to the contrary, no more than one-half of the rooms in any health care facility may be designated as smoking areas.~~

~~(3) In a workplace where there are smokers and nonsmokers, employers shall develop, implement, and post a policy regarding designation of smoking and nonsmoking areas. Such a policy shall take into consideration the proportion of smokers and nonsmokers. Employers who make reasonable efforts to develop, implement, and post such a policy shall be deemed in compliance. An entire area may be designated as a smoking area if all workers routinely assigned to work in that area at the same time agree. With respect to the square footage in any public place as~~



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~~described in subsection (4), this square footage shall not include private office work space which is not a common area as defined in s. 386.203(6) and which is ordinarily inaccessible to the public.~~

~~(4)(a) No more than one-half of the total square footage in any public place within a single enclosed indoor area used for a common purpose shall be reserved and designated as a smoking area.~~

~~(b) The square footage limitation set forth in paragraph (a) shall not apply to any restaurant subject to this part. With respect to such restaurants:~~

~~1. No more than 50 percent of the seats existing in a restaurant's dining room at any time shall be located in an area designated as a smoking area.~~

~~2. Effective October 1, 2001, no more than 35 percent of the seats existing in a restaurant's dining room at any time shall be located in an area designated as a smoking area.~~

~~(5) A smoking area may not contain common areas which are expected to be used by the public.~~

~~(6) Each state agency may adopt rules for administering this section which take into consideration the provisions of this part.~~

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

386.206 Posting of signs; requiring policies.--

(1) The person in charge of an enclosed indoor workplace that prior to adoption of s. 20, Art. X of the State Constitution was required to post signs under the requirements of this section must continue to ~~a public place shall~~ conspicuously post, or cause to be posted, ~~in any area~~



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~~designated as a smoking area~~ signs stating that smoking is not permitted in the enclosed indoor workplace ~~such area~~. Each sign posted pursuant to this section must ~~shall~~ have letters of reasonable size which can be easily read. The color, design, and precise place of posting of such signs shall be left to the discretion of the person in charge of the premises. ~~In order to increase public awareness, the person in charge of a public place may, at his or her discretion, also post "NO SMOKING EXCEPT IN DESIGNATED AREAS" signs as appropriate.~~

(2) The proprietor or other person in charge of an enclosed indoor workplace must develop and implement a policy regarding the smoking prohibitions established in this part. The policy may include, but is not limited to, procedures to be taken when the proprietor or other person in charge witnesses or is made aware of a violation of s. 386.204 in the enclosed indoor workplace and must include a policy which prohibits an employee from smoking in the enclosed indoor workplace. In order to increase public awareness, the person in charge of an enclosed indoor workplace may, at his or her discretion, post "NO SMOKING" signs as deemed appropriate.

(3) The person in charge of an airport terminal that includes a designated customs smoking room must conspicuously post, or cause to be posted, signs stating that no smoking is permitted except in the designated customs smoking room located in the customs area of the airport. Each sign posted pursuant to this section must have letters of reasonable size that can be easily read. The color, design, and precise locations at which such signs are posted shall be left to the discretion of the person in charge of the premises.

(4) The proprietor or other person in charge of an



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enclosed indoor workplace where a smoking cessation program, medical research, or scientific research is conducted or performed must conspicuously post, or cause to be posted, signs stating that smoking is permitted for such purposes in designated areas in the enclosed indoor workplace. Each sign posted pursuant to this section must have letters of reasonable size which can be easily read. The color, design, and precise locations at which such signs are posted shall be left to the discretion of the person in charge of the premises.

(5) The provisions of subsection (1) shall expire on July 1, 2005.

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

386.207 Administration; enforcement; civil penalties; ~~exemptions.--~~

(1) The department or the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation ~~or the division~~ shall enforce this part based upon each department's specific areas of regulatory authority ss. 386.205 and 386.206 and to implement such enforcement shall adopt, in consultation with the State Fire Marshal, rules specifying procedures to be followed by enforcement personnel in investigating complaints and notifying alleged violators, ~~rules defining types of cases for which exemptions may be granted,~~ and rules specifying procedures by which appeals may be taken by aggrieved parties.

(2) Public agencies responsible for the management and maintenance of government buildings shall report observed violations to the department ~~or division~~. The State Fire Marshal shall report to the department ~~or division~~ observed violations



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of this part ~~ss. 386.205 and 386.206~~ found during its periodic inspections conducted under ~~pursuant to~~ its regulatory authority.

(3) The department or the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation ~~or the division~~, upon notification of observed violations of this part ~~ss. 386.205 and 386.206~~, shall issue to the proprietor or other person in charge of such enclosed indoor workplace ~~public place~~ a notice to comply with this part ~~ss. 386.205 and 386.206~~. If the ~~such~~ person fails to comply within 30 days after receipt of the ~~such~~ notice, the department or the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation ~~division~~ shall assess a civil penalty against the person of not less than \$250 and ~~him or her~~ not to exceed \$750 ~~\$100~~ for the first violation and not less than \$500 and not to exceed \$2,000 ~~\$500~~ for each subsequent violation. The imposition of the ~~such~~ fine must ~~shall~~ be in accordance with ~~the provisions of~~ chapter 120. If a person refuses to comply with this part ~~ss. 386.205 and 386.206~~, after having been assessed such penalty, the department or the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation ~~division~~ may file a complaint in the circuit court of the county in which the enclosed indoor workplace ~~such public place~~ is located to require compliance.

~~(3) A person may request an exemption from ss. 386.205 and 386.206 by applying to the department or the division. The department or the division may grant exemptions on a case-by-~~



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~~ease basis where it determines that substantial good faith efforts have been made to comply or that emergency or extraordinary circumstances exist.~~

~~(3)~~(4) All fine moneys collected pursuant to this section shall be used by the department for children's medical services programs pursuant to the provisions of part I of chapter 391.

Section 9. Section 386.208, Florida Statutes, is amended to read:

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

Section 10. Section 386.209, Florida Statutes, is reenacted to read:

386.209 Regulation of smoking preempted to state.--This part expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.

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

386.211 Public announcements in mass transportation terminals.--Announcements about the Florida Clean Indoor Air Act shall be made regularly over public address systems in terminals of public transportation carriers located in metropolitan statistical areas with populations over 230,000 according to the latest census. These announcements shall be made at least every 30 minutes and shall be made in appropriate languages. Each announcement must ~~shall~~ include a statement to the effect that Florida is a clean indoor air state and that smoking is not



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allowed except as provided in this part ~~only in designated~~
~~areas.~~

Section 12. Section 386.212, Florida Statutes, is reenacted and amended to read:

386.212 Smoking prohibited near school property; penalty.--

(1) It is unlawful for any person under 18 years of age to smoke tobacco 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. This section does ~~shall~~ not apply to any person occupying a moving vehicle or within a private residence.

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

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

(3) Any person issued a citation pursuant to this section shall be deemed to be charged with a civil infraction punishable



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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.

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

Section 13. Section 386.2125, Florida Statutes, is created to read:

386.2125 Rulemaking.--The department and the Department of Business and Professional Regulation, shall, in consultation with the State Fire Marshal, have the authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part within each agency's specific areas of regulatory authority. Whenever assessing a smoking cessation program for approval, the department shall consider whether the smoking cessation program limits to the extent possible the potential for exposure to second-hand tobacco smoke, if any, to nonparticipants in the enclosed indoor workplace.

Section 14. Section 561.695, Florida Statutes, is created to read:

561.695 Stand-alone bar enforcement; qualification; penalties.--

(1) The division shall designate as a stand-alone bar the licensed premises of a vendor that operates a business that meets the definition of a stand-alone bar in s. 386.203(11) upon receipt of the vendor's election to permit tobacco smoking in the licensed premises.

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



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renewal of a vendor's license, a licensed vendor who makes the required election under subsection (1) may permit tobacco smoking on the licensed premises and must post a notice of such intention at the same location at which the vendor's current alcoholic beverage license is posted. The notice shall affirm the vendor's intent to comply with the conditions and qualifications of a stand-alone bar imposed pursuant to part II of chapter 386 and the Beverage Law.

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

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

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

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

(b) Other than customary bar snacks as defined by rule of the division, the licensed vendor does not provide or serve food



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to a person on the licensed premises without requiring the person to pay a separately stated charge for food that reasonably approximates the retail value of the food.

(c) The licensed vendor conspicuously posts signs at each entrance to the establishment stating that smoking is permitted in the establishment.

The division shall establish by rule the format of the affidavit required by this subsection.

(6) Every third year after the initial designation, on or before the licensee's annual license renewal, the licensed vendor must additionally provide to the division an agreed upon procedures report in a format established by rule of the department from a Florida certified public accountant that attests to the licensee's compliance with the percentage requirement of s. 386.203(11) for the preceding 36-month period. Such report shall be admissible in any proceeding pursuant to s. 120.57. This subsection does not apply to a stand-alone bar if the only food provided by the business, or in any other way present or brought onto the premises for consumption by patrons, is limited to nonperishable snack food items commercially prepackaged off the premises of the stand-alone bar and served without additions or preparation; except that a stand-alone bar may pop popcorn for consumption on its premises, provided that the equipment used to pop the popcorn is not used to prepare any other food for patrons.

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



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386.203(11) for compliance with this section.

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

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

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

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

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

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

Section 15. If any provision of this act or the application thereof to any person or circumstance is held



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invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 16. If any law amended by this act was also amended by a law enacted at the 2003 Regular Session of the Legislature, such laws shall be construed as if they had been enacted during the same session of the Legislature, and full effect shall be given to each if possible.

Section 17. This act shall take effect July 1, 2003.