

## CHAPTER 2019-14

### Committee Substitute for Senate Bill No. 7012

An act relating to vaping; implementing s. 20, Art. X of the State Constitution, as amended by Amendment 9 (2018); renaming part II of ch. 386, F.S.; expanding its application to include vaping in indoor areas; amending s. 386.202, F.S.; revising legislative intent; amending s. 386.203, F.S.; defining and redefining terms; amending s. 386.204, F.S.; prohibiting vaping in an enclosed indoor workplace, except as otherwise provided; amending s. 386.2045, F.S.; providing exceptions to the prohibition against vaping and smoking in an enclosed indoor workplace; amending s. 386.205, F.S.; revising requirements for customs smoking rooms; amending s. 386.206, F.S.; requiring the proprietor or other person in charge of an enclosed indoor workplace to develop and implement a policy regarding specified smoking and vaping prohibitions; authorizing the proprietor or other person to post signs to indicate that smoking and vaping are prohibited; requiring specified signs to be posted in airport terminals and in enclosed indoor workplaces under certain circumstances; amending s. 386.207, F.S.; making technical changes; reenacting s. 386.208, F.S., relating to penalties; amending s. 386.209, F.S.; clarifying that the preemption to the state of the regulation of smoking does not preclude the adoption of an ordinance on the use of vapor-generating devices; amending s. 386.211, F.S.; revising requirements for public announcements in mass transportation terminals; amending s. 386.212, F.S.; prohibiting vaping near school property; providing civil penalties; amending s. 386.2125, F.S.; authorizing the Department of Business and Professional Regulation, in consultation with the State Fire Marshal, to adopt certain rules; providing requirements for assessing a vaping cessation program for approval; amending s. 561.695, F.S.; conforming provisions to changes made by the act to allow a vendor that operates a stand-alone bar to authorize tobacco smoking and vaping in the licensed premises; providing requirements, enforcement, and penalties for stand-alone bars that authorize vaping; providing an effective date.

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

Section 1. Part II of chapter 386, Florida Statutes, entitled “INDOOR AIR: TOBACCO SMOKE,” is renamed “INDOOR AIR: SMOKING AND VAPING.”

Section 2. Section 386.202, Florida Statutes, is amended to read:

386.202 Legislative intent.—The purpose of this part is to protect people from the health hazards of secondhand tobacco smoke and vapor and to implement the Florida health initiative in s. 20, Art. X of the State Constitution. It is the intent of the Legislature to not inhibit, or otherwise obstruct, medical or scientific research, or smoking or vaping cessation programs approved by the Department of Health.

Section 3. Present subsections (7), (8), (9), (10), (11), and (12) of section 386.203, Florida Statutes, are redesignated as subsections (8), (9), (10), (11), (12), and (17), respectively, new subsections (7), (13), (14), (15), and (16) are added to that section, and present subsections (4), (5), and (13) of that section are amended, to read:

386.203 Definitions.—As used in this part:

(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, vacation rentals, transient apartments, transient lodging establishments, roominghouses, boardinghouses, 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 or vaping may be authorized 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.

(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 this section subsection (12).

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

(13) “Vape” or “vaping” means 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.

(14) “Vapor” means 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.

(15) “Vapor-generating electronic device” means 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.

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

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

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

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

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

386.2045 Enclosed indoor workplaces; specific exceptions.—Notwithstanding s. 386.204, tobacco smoking or vaping, or both, may be authorized 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) A 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) A retail vape shop.

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

~~(5)(4) A 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 this part.~~

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

~~(7)(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 contained in s. 386.205.~~

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

386.205 Customs smoking rooms.—A customs smoking room 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 customs smoking room may ~~only~~ 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 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:

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

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

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

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

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

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

## 386.206 Posting of signs; requiring policies.—

(1) The proprietor or other person in charge of an enclosed indoor workplace must develop and implement a policy regarding the smoking and vaping 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 or vaping, or both, 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 signs to indicate that smoking or vaping, or both, are prohibited ~~“NO SMOKING” signs as deemed appropriate.~~

(2) 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 and vaping are prohibited is permitted~~ except in the designated customs smoking room located in the customs area of the airport. Each sign posted pursuant to this subsection ~~section~~ must have letters of reasonable size which ~~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.

(3) The proprietor or other person in charge of an enclosed indoor workplace where a smoking or vaping cessation program, medical research, or scientific research is conducted or performed must conspicuously post, or cause to be posted, signs stating that smoking or vaping, or both, as applicable, are authorized ~~is permitted~~ for such purposes in designated areas in the enclosed indoor workplace. Each sign posted pursuant to this subsection ~~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.

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

## 386.207 Administration; enforcement; civil penalties.—

(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 shall enforce this part based upon each department's specific areas of regulatory authority 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 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. The State Fire Marshal shall report to the department observed violations of

this part found during its periodic inspections conducted under 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, upon notification of observed violations of this part, shall issue to the proprietor or other person in charge of such enclosed indoor workplace a notice to comply with this part. If the person fails to comply within 30 days after receipt of the 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 shall assess against the person a civil penalty ~~against the person~~ of not less than \$250 and not more than ~~to exceed~~ \$750 for the first violation and not less than \$500 and not more than ~~to exceed~~ \$2,000 for each subsequent violation. The imposition of the fine must be in accordance with chapter 120. If a person refuses to comply with this part, 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 may file a complaint in the circuit court of the county in which the enclosed indoor workplace is located to require compliance.

(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 reenacted to read:

386.208 Penalties.—Any person who violates s. 386.204 commits a noncriminal violation as defined 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 amended 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; however, school districts may further restrict smoking by persons on school district property. This section does not preclude the adoption of municipal or county ordinances that impose more restrictive regulation on the use of vapor-generating devices than is provided in this part.

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 include a statement to the effect that Florida is a clean indoor air state and that smoking and vaping are prohibited ~~is not allowed~~ except as provided in this part.

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

386.212 Smoking and vaping prohibited near school property; penalty.

(1) It is unlawful for any person under 18 years of age to smoke tobacco or vape 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 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 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.

(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 amended to read:

386.2125 Rulemaking.—The department and the Department of Business and Professional Regulation, may 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 or vaping cessation program for approval, the department shall consider whether the smoking or vaping cessation program limits, to the extent possible, any the potential for exposure to secondhand tobacco smoke or vapor for, if any, to nonparticipants in the enclosed indoor workplace.

Section 14. Section 561.695, Florida Statutes, is amended 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 ~~s. 386.203(11)~~ upon receipt of the vendor's election to authorize permit tobacco smoking or vaping, or both, in the licensed premises.

(2) ~~Upon this act becoming a law and until the annual renewal of a vendor's license,~~ A licensed vendor who makes the required election under subsection (1) before the annual renewal of its license may authorize permit tobacco smoking or vaping, or both, 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 and vaping are authorized ~~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(12) ~~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 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 or vaping, or both, are authorized is permitted in the establishment.

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

(6) 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. 386.203~~ s. 386.203(11) for compliance with this section.

(7) Any vendor that operates a business that meets the definition of a stand-alone bar as ~~provided in s. 386.203~~ which s. 386.203(11) who violates ~~the provisions of this section or part II of chapter 386~~ is 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 or vaping, or both, are authorized ~~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 or vaping, or both, are authorized ~~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 or vaping, or both, are authorized ~~is permitted~~.

(8) 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. This act shall take effect July 1, 2019.

Approved by the Governor April 26, 2019.

Filed in Office Secretary of State April 26, 2019.