

PART II

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**386.201 Popular name.**—This part may be cited by the popular name the “Florida Clean Indoor Air Act.”

**History.**—s. 1, ch. 85-257; s. 1, ch. 92-185; s. 1, ch. 2003-398.

**386.202 Legislative intent.**—The purpose of this part 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. 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.

**History.**—s. 2, ch. 85-257; s. 2, ch. 92-185; s. 2, ch. 2003-398.

**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.

(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 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.

(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) “Secondhand 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.

(10) “Smoking” means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and 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.

(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.

**History.**—s. 3, ch. 85-257; s. 1, ch. 88-266; s. 3, ch. 92-185; s. 42, ch. 94-218; s. 78, ch. 97-101; s. 2, ch. 2000-185; s. 3, ch. 2003-398; s. 10, ch. 2011-119.

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

**History.**—s. 4, ch. 85-257; s. 4, ch. 92-185; s. 4, ch. 2003-398.

**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 this part.

(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 contained in s. 386.205.

**History.**—s. 5, ch. 2003-398.

**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 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), must not be performed in the room at any given time.

(2) Tobacco smoking 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 prevent the escape of secondhand tobacco smoke into the enclosed indoor workplace.

(4) 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.

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

History.—s. 5, ch. 85-257; s. 5, ch. 92-185; s. 79, ch. 97-101; s. 1, ch. 2000-185; s. 1, ch. 2000-370; s. 6, ch. 2003-398.

### **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 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.

(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 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.

(3) The proprietor or other person in charge of an 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.

History.—s. 6, ch. 85-257; s. 6, ch. 92-185; s. 687, ch. 95-148; s. 7, ch. 2003-398; s. 10, ch. 2006-2.

### **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 a civil penalty against the person of not less than \$250 and not to exceed \$750 for the first violation and not less than \$500 and not 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.

History.—s. 7, ch. 85-257; s. 2, ch. 88-266; s. 1, ch. 89-109; s. 688, ch. 95-148; s. 8, ch. 2003-398.

**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.

History.—s. 8, ch. 85-257; s. 7, ch. 92-185; s. 9, ch. 2003-398.

**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.

History.—s. 9, ch. 85-257; s. 8, ch. 92-185; s. 10, ch. 2003-398; s. 1, ch. 2011-108.

**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 is not allowed except as provided in this part.

History.—s. 9, ch. 92-185; s. 11, ch. 2003-398.

**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 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 "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.

**History.**—s. 1, ch. 96-217; s. 12, ch. 2003-398.

**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 secondhand tobacco smoke, if any, to nonparticipants in the enclosed indoor workplace.

**History.**—s. 13, ch. 2003-398.