

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 regulation of

26 | vaping is not preempted by the state; amending s.
 27 | 386.211, F.S.; revising requirements for public
 28 | announcements in mass transportation terminals;
 29 | amending s. 386.212, F.S.; prohibiting vaping near
 30 | school property; providing civil penalties; amending
 31 | s. 386.2125, F.S.; authorizing the Department of
 32 | Business and Professional Regulation, in consultation
 33 | with the State Fire Marshal, to adopt certain rules;
 34 | providing requirements for assessing a vaping
 35 | cessation program for approval; amending s. 561.695,
 36 | F.S.; conforming provisions to changes made by the act
 37 | to allow a vendor that operates a stand-alone bar to
 38 | authorize tobacco smoking and vaping in the licensed
 39 | premises; providing requirements, enforcement, and
 40 | penalties for stand-alone bars that authorize vaping;
 41 | providing an effective date.

42 |
 43 | Be It Enacted by the Legislature of the State of Florida:

44 |
 45 | Section 1. Part II of chapter 386, Florida Statutes,
 46 | entitled "INDOOR AIR: TOBACCO SMOKE," is renamed "INDOOR AIR:
 47 | SMOKING AND VAPING."

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

50 | 386.202 Legislative intent.—The purpose of this part is to

51 protect people from the health hazards of secondhand tobacco
 52 smoke and vapor and to implement the Florida health initiative
 53 in s. 20, Art. X of the State Constitution. It is the intent of
 54 the Legislature to not inhibit, or otherwise obstruct, medical
 55 or scientific research or smoking or vaping cessation programs
 56 approved by the Department of Health.

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

63 386.203 Definitions.—As used in this part:

64 (4) "Designated ~~smoking~~ guest rooms at public lodging
 65 establishments" means the sleeping rooms and directly associated
 66 private areas, such as bathrooms, living rooms, and kitchen
 67 areas, if any, rented to guests for their exclusive transient
 68 occupancy in public lodging establishments, including hotels,
 69 motels, vacation rentals, transient apartments, transient
 70 lodging establishments, roominghouses, boardinghouses, bed and
 71 breakfast inns, and the like; and designated by the person or
 72 persons having management authority over such public lodging
 73 establishment as rooms in which smoking or vaping may be
 74 authorized ~~permitted~~.

75 (5) "Enclosed indoor workplace" means any place where one

76 | or more persons engages in work, and which place is
 77 | predominantly or totally bounded on all sides and above by
 78 | physical barriers, regardless of whether such barriers consist
 79 | of or include, without limitation, uncovered openings; screened
 80 | or otherwise partially covered openings; or open or closed
 81 | windows, jalousies, doors, or the like. A place is
 82 | "predominantly" bounded by physical barriers during any time
 83 | when both of the following conditions exist:

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

90 | (13) "Vape" or "vaping" means to inhale or exhale vapor
 91 | produced by a vapor-generating electronic device or to possess a
 92 | vapor-generating electronic device while that device is actively
 93 | employing an electronic, a chemical, or a mechanical means
 94 | designed to produce vapor or aerosol from a nicotine product or
 95 | any other substance.

96 | (14) "Vapor" means aerosolized or vaporized nicotine or
 97 | other aerosolized or vaporized substance produced by a vapor-
 98 | generating electronic device or exhaled by the person using such
 99 | a device.

100 | (15) "Vapor-generating electronic device" means any

101 product that employs an electronic, a chemical, or a mechanical
 102 means capable of producing vapor or aerosol from a nicotine
 103 product or any other substance, including, but not limited to,
 104 an electronic cigarette, electronic cigar, electronic cigarillo,
 105 electronic pipe, or other similar device or product, any
 106 replacement cartridge for such device, and any other container
 107 of solution or other substance intended to be used with or
 108 within an electronic cigarette, electronic cigar, electronic
 109 cigarillo, electronic pipe, or other similar device or product.

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

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

118 386.204 Prohibition.—A person may not smoke or vape in an
 119 enclosed indoor workplace, except as otherwise provided in s.
 120 386.2045.

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

123 386.2045 Enclosed indoor workplaces; specific exceptions.—
 124 Notwithstanding s. 386.204, tobacco smoking or vaping may be
 125 authorized ~~permitted~~ in each of the following places:

126 (1) ~~PRIVATE RESIDENCE.~~—A private residence whenever it is
 127 not being used commercially to provide child care, adult care,
 128 or health care, or any combination thereof as defined in s.
 129 386.203 ~~s. 386.203(1)~~.

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

134 (3) A retail vape shop.

135 (4) ~~(3)~~ A designated ~~smoking~~ guest room at a public lodging
 136 establishment. ~~DESIGNATED SMOKING GUEST ROOM.~~ A designated
 137 ~~smoking guest room at a public lodging establishment as defined~~
 138 ~~in s. 386.203(4).~~

139 (5) ~~(4)~~ ~~STAND-ALONE BAR.~~—A business that meets the
 140 definition of a stand-alone bar ~~as defined in s. 386.203(11)~~ and
 141 that otherwise complies with all applicable provisions of the
 142 Beverage Law and this part.

143 (6) ~~(5)~~ ~~SMOKING CESSATION PROGRAM, MEDICAL OR SCIENTIFIC~~
 144 ~~RESEARCH.~~—An enclosed indoor workplace, to the extent that
 145 tobacco smoking or vaping is an integral part of a smoking or
 146 vaping cessation program approved by the department, or medical
 147 or scientific research conducted therein. Each room in which
 148 tobacco smoking or vaping is authorized ~~permitted~~ must comply
 149 with the signage requirements in s. 386.206.

150 (7) ~~(6)~~ ~~CUSTOMS SMOKING ROOM.~~—A customs smoking room in an

151 | airport in-transit lounge under the authority and control of the
 152 | Bureau of Customs and Border Protection of the United States
 153 | Department of Homeland Security subject to the restrictions
 154 | contained in s. 386.205.

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

157 | 386.205 Customs smoking rooms.—A customs smoking room may
 158 | be designated by the person in charge of an airport in-transit
 159 | lounge under the authority and control of the Bureau of Customs
 160 | and Border Protection of the United States Department of
 161 | Homeland Security. A customs smoking room may only be designated
 162 | in an airport in-transit lounge under the authority and control
 163 | of the Bureau of Customs and Border Protection of the United
 164 | States Department of Homeland Security. A customs smoking room
 165 | may not be designated in an elevator, restroom, or any common
 166 | area as defined by s. 386.203. Each customs smoking room must
 167 | conform to the following requirements:

168 | (1) Work, other than essential services defined in s.
 169 | 386.203 ~~s. 386.203(6)~~, may ~~must~~ not be performed in the room at
 170 | any ~~given~~ time.

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

174 | (3) Each customs smoking room must be enclosed by physical
 175 | barriers that are impenetrable by secondhand tobacco smoke and

176 | vapor and must prevent the escape of the ~~secondhand tobacco~~
 177 | ~~smoke~~ and vapor into the enclosed indoor workplace.

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

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

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

187 | 386.206 Posting of signs; requiring policies.—

188 | (1) The proprietor or other person in charge of an
 189 | enclosed indoor workplace must develop and implement a policy
 190 | regarding the smoking and vaping prohibitions established in
 191 | this part. The policy may include, but is not limited to,
 192 | procedures to be taken when the proprietor or other person in
 193 | charge witnesses or is made aware of a violation of s. 386.204
 194 | in the enclosed indoor workplace and must include a policy which
 195 | prohibits an employee from smoking or vaping in the enclosed
 196 | indoor workplace. In order to increase public awareness, the
 197 | person in charge of an enclosed indoor workplace may, at his or
 198 | her discretion, post signs to indicate that smoking or vaping is
 199 | prohibited ~~"NO SMOKING" signs as deemed appropriate.~~

200 | (2) The person in charge of an airport terminal that

201 includes a designated customs smoking room must conspicuously
 202 post, or cause to be posted, signs stating that ~~no~~ smoking and
 203 vaping are prohibited ~~is permitted~~ except in the designated
 204 customs smoking room located in the customs area of the airport.
 205 Each sign posted pursuant to this subsection ~~section~~ must have
 206 letters of reasonable size which ~~that~~ can be easily read. The
 207 color, design, and precise locations at which such signs are
 208 posted shall be left to the discretion of the person in charge
 209 of the premises.

210 (3) The proprietor or other person in charge of an
 211 enclosed indoor workplace where a smoking or vaping cessation
 212 program, medical research, or scientific research is conducted
 213 or performed must conspicuously post, or cause to be posted,
 214 signs stating that smoking or vaping is authorized ~~permitted~~ for
 215 such purposes in designated areas in the enclosed indoor
 216 workplace. Each sign posted pursuant to this subsection ~~section~~
 217 must have letters of reasonable size which can be easily read.
 218 The color, design, and precise locations at which such signs are
 219 posted shall be left to the discretion of the person in charge
 220 of the premises.

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

223 386.207 Administration; enforcement; civil penalties.—

224 (1) The department or the Division of Hotels and
 225 Restaurants or the Division of Alcoholic Beverages and Tobacco

226 of the Department of Business and Professional Regulation shall
 227 enforce this part based upon each department's specific areas of
 228 regulatory authority and to implement such enforcement shall
 229 adopt, in consultation with the State Fire Marshal, rules
 230 specifying procedures to be followed by enforcement personnel in
 231 investigating complaints and notifying alleged violators and
 232 rules specifying procedures by which appeals may be taken by
 233 aggrieved parties.

234 (2) Public agencies responsible for the management and
 235 maintenance of government buildings shall report observed
 236 violations to the department. The State Fire Marshal shall
 237 report to the department observed violations of this part found
 238 during its periodic inspections conducted under its regulatory
 239 authority.

240 (3) The department or the Division of Hotels and
 241 Restaurants or the Division of Alcoholic Beverages and Tobacco
 242 of the Department of Business and Professional Regulation, upon
 243 notification of observed violations of this part, shall issue to
 244 the proprietor or other person in charge of such enclosed indoor
 245 workplace a notice to comply with this part. If the person fails
 246 to comply within 30 days after receipt of the notice, the
 247 department or the Division of Hotels and Restaurants or the
 248 Division of Alcoholic Beverages and Tobacco of the Department of
 249 Business and Professional Regulation shall assess against the
 250 person a civil penalty ~~against the person~~ of not less than \$250

251 and not more than ~~to exceed~~ \$750 for the first violation and not
 252 less than \$500 and not more than ~~to exceed~~ \$2,000 for each
 253 subsequent violation. The imposition of the fine must be in
 254 accordance with chapter 120. If a person refuses to comply with
 255 this part, after having been assessed such penalty, the
 256 department or the Division of Hotels and Restaurants or the
 257 Division of Alcoholic Beverages and Tobacco of the Department of
 258 Business and Professional Regulation may file a complaint in the
 259 circuit court of the county in which the enclosed indoor
 260 workplace is located to require compliance.

261 (4) All fine moneys collected pursuant to this section
 262 shall be used by the department for children's medical services
 263 programs pursuant to ~~the provisions of~~ part I of chapter 391.
 264

265 Section 9. Section 386.208, Florida Statutes, is reenacted
 266 to read:

267 386.208 Penalties.—Any person who violates s. 386.204
 268 commits a noncriminal violation as defined in s. 775.08(3),
 269 punishable by a fine of not more than \$100 for the first
 270 violation and not more than \$500 for each subsequent violation.
 271 Jurisdiction shall be with the appropriate county court.

272 Section 10. Section 386.209, Florida Statutes, is amended
 273 to read:

274 386.209 Regulation of smoking preempted to state.—This
 275 part expressly preempts regulation of smoking to the state and

276 | supersedes any municipal or county ordinance on the subject;
 277 | however, school districts may further restrict smoking by
 278 | persons on school district property. This section does not
 279 | preclude the adoption of municipal or county ordinances that
 280 | impose more restrictive regulation on vaping than is provided in
 281 | this part.

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

284 | 386.211 Public announcements in mass transportation
 285 | terminals.—Announcements about the Florida Clean Indoor Air Act
 286 | shall be made regularly over public address systems in terminals
 287 | of public transportation carriers located in metropolitan
 288 | statistical areas with populations over 230,000 according to the
 289 | latest census. These announcements shall be made at least every
 290 | 30 minutes and shall be made in appropriate languages. Each
 291 | announcement must include a statement to the effect that Florida
 292 | is a clean indoor air state and that smoking and vaping are
 293 | prohibited ~~is not allowed~~ except as provided in this part.

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

296 | 386.212 Smoking and vaping prohibited near school
 297 | property; penalty.—

298 | (1) It is unlawful for any person under 18 years of age to
 299 | smoke tobacco or vape in, on, or within 1,000 feet of the real
 300 | property comprising a public or private elementary, middle, or

301 secondary school between the hours of 6 a.m. and midnight. This
 302 section does not apply to any person occupying a moving vehicle
 303 or within a private residence.

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

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

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

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

330 Section 13. Section 386.2125, Florida Statutes, is amended
 331 to read:

332 386.2125 Rulemaking.—The department and the Department of
 333 Business and Professional Regulation, shall, in consultation
 334 with the State Fire Marshal, have the authority to adopt rules
 335 pursuant to ss. 120.536(1) and 120.54 to implement the
 336 provisions of this part within each agency's specific areas of
 337 regulatory authority. Whenever assessing a smoking or vaping
 338 cessation program for approval, the department shall consider
 339 whether the smoking or vaping cessation program limits, to the
 340 extent possible, any ~~the~~ potential for exposure to secondhand
 341 tobacco smoke or vapor, ~~if any~~, to nonparticipants in the
 342 enclosed indoor workplace.

343 Section 14. Section 561.695, Florida Statutes, is amended
 344 to read:

345 561.695 Stand-alone bar enforcement; qualification;
 346 penalties.—

347 (1) The division shall designate as a stand-alone bar the
 348 licensed premises of a vendor that operates a business that
 349 meets the definition of a stand-alone bar in s. 386.203 ~~s.~~
 350 ~~386.203(11)~~ upon receipt of the vendor's election to authorize

351 ~~permit~~ tobacco smoking or vaping in the licensed premises.

352 (2) ~~Upon this act becoming a law and until the annual~~
 353 ~~renewal of a vendor's license,~~ A licensed vendor who makes the
 354 required election under subsection (1) before the annual renewal
 355 of its license may authorize ~~permit~~ tobacco smoking or vaping on
 356 the licensed premises and must post a notice of such intention
 357 at the same location at which the vendor's current alcoholic
 358 beverage license is posted. The notice shall affirm the vendor's
 359 intent to comply with the conditions and qualifications of a
 360 stand-alone bar imposed pursuant to part II of chapter 386 and
 361 the Beverage Law.

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

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

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

378 period, the following:

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

382 (b) Other than customary bar snacks as defined by rule of
 383 the division, the licensed vendor does not provide or serve food
 384 to a person on the licensed premises without requiring the
 385 person to pay a separately stated charge for food that
 386 reasonably approximates the retail value of the food.

387 (c) The licensed vendor conspicuously posts signs at each
 388 entrance to the establishment stating that smoking or vaping is
 389 authorized ~~permitted~~ in the establishment.

390
 391 The division shall establish by rule the format of the affidavit
 392 required by this subsection. A licensed vendor shall not
 393 knowingly make a false statement on the affidavit required by
 394 this subsection. In addition to the penalties provided in
 395 subsection (7), a licensed vendor who knowingly makes a false
 396 statement on the affidavit required by this subsection may be
 397 subject to suspension or revocation of the vendor's alcoholic
 398 beverage license under s. 561.29.

399 (6) The Division of Alcoholic Beverages and Tobacco shall
 400 have the power to enforce ~~the provisions of~~ part II of chapter
 401 386 and to audit a licensed vendor that operates a business that
 402 meets the definition of a stand-alone bar ~~as provided in~~ s.
 403 386.203 ~~s. 386.203(11)~~ for compliance with this section.

404 (7) Any vendor that operates a business that meets the

405 definition of a stand-alone bar ~~as provided in s. 386.203 which~~
406 ~~s. 386.203(11) who violates the provisions of this section or~~
407 part II of chapter 386 is ~~shall be~~ subject to the following
408 penalties:

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

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

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

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

427 (8) The division shall adopt rules governing the
428 designation process, criteria for qualification, required
429 recordkeeping, auditing, and all other rules necessary for the
430 effective enforcement and administration of this section and
431 part II of chapter 386. The division is authorized to adopt

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432 emergency rules pursuant to s. 120.54(4) to implement ~~the~~
433 ~~provisions~~ of this section.

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