



Amendment 6 Implementation (HB 63-A) Explained

The following information helps explain what is and what is not covered in the Amendment 6 implementing legislation (HB 63-A) passed by the 2003 Florida Legislature on the final day of Special Session A. The act shall take effect July 1, 2003. However, the agencies charged with implementing HB 63-A must promulgate administrative rules explaining administration and enforcement of the law. Generally, an agency must adopt rules within 180 days after a bill becomes law — in this case no later than December 27, 2003.

DISCLAIMER: The following is only a general guide and shall not be relied upon as legal advice or as a complete summary of all the provisions contained in Florida Statutes on the regulation of smoking.

I. NO SMOKING SHALL OCCUR IN:

- A. Enclosed, indoor workplaces, which are defined as:
 - 1. Any place where one or more persons engage in work, even if it is a nonprofit's workplace for one or more of the nonprofit's employees. It does not matter whether work is occurring at any particular time, as long as work occurs at some time.
 - 2. A place predominantly or totally bounded at least 50 percent on the sides *and* 50 percent covered above by physical barriers that exclude rain. Barriers are still barriers even if they have some uncovered openings, screened or partially covered openings, open or closed windows, jalousies, doors, or the like.
 - 3. All indoor areas are included, such as hallways, corridors, lobbies, conference rooms, aisles, water fountain areas, break rooms, restrooms, stairwells, entryways, etc.
- B. Charitable, nonprofit or veterans' organizations that have an employee
- C. Restaurants
- D. Hotel lobbies & common areas
- E. Country clubs
- F. Prisons
- G. Bowling alleys
- H. Movie sets, theatrical performances
- I. Private residences during use commercially for compensation to provide childcare, adult care, or health care
- J. Airport in-transit customs elevators, restrooms, and common areas
- K. Airport in-transit customs smoking rooms during services by a janitor, for repairs or renovations
- L. Airports (except as provided below)

II. SMOKING *MAY* OCCUR, BUT IS *NOT* REQUIRED TO BE PERMITTED, AND IS NOT ENCOURAGED IN:

- A. Private residences when *not* being used commercially for compensation to provide childcare, adult care or health care

- B. Stand-alone bars, subject to the following rules and definitions:
1. Any licensed premises devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or combination thereof, in which the serving of food, if any, is merely incidental
 2. No more than 10 percent of gross revenues may be derived from the sale of food consumed on the licensed premises
 3. The 10-percent rule does not apply to food provided by the business if limited to popcorn or nonperishable snack items commercially prepackaged off the premises.
 4. Not located within, and not sharing any common entryway or common indoor area with, any other enclosed workplace, such as a hallway, concourse or lobby
 5. Must file election to permit smoking
 6. Upon filing election, Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation must designate it as a stand-alone bar
 7. Only the licensed vendor may provide food on the licensed premises. Other than customary 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
 8. After initial designation, to continue to qualify as a stand-alone bar the licensee must annually provide to the Division an affidavit that certifies compliance with the provisions for stand-alone bar designation
 9. Every third year after the initial designation, the licensed vendor must additionally provide a report from a certified public accountant that attests to the licensee's compliance with the percentage requirement, separately stated food charges, and signage for the preceding 36-months
- C. Retail tobacco shops
- D. Designated guest sleeping rooms in hotels and motels
- E. Outdoor patios
- F. Tobacco manufacturing facilities, if tobacco must be heated, burned, or smoked as a necessary and integral part of the process of making, manufacturing, importing, or distributing a tobacco product for eventual retail sale of the tobacco
- G. Airport in-transit passenger smoking lounges in customs controlled areas at international airports that meet the following tests:
1. Maintained under negative pressure sufficient to contain smoke within the room
 2. Enclosed by physical barriers impenetrable by secondhand smoke into enclosed indoor workplaces
 3. Ventilated directly outdoors away from air intake ducts
- H. Charitable, nonprofit or veterans' organizations meeting the following tests:
1. Does the organization hold a current charitable, nonprofit, or veterans' organization exemption under the specified parts of section 501(c) of the Internal Revenue Code?
 - If "no" – no smoking
 - If "yes" – go to Question 2

2. Does the organization have an employee who works on the premises at any time?
 - If “no” – go to Question 3
 - If “yes” – no smoking
 3. Is the indoor space owned or leased by and used exclusively for noncommercial activities performed by the members or members’ guests?
 - If “no” – no smoking
 - If “yes” – go to Question 4
 4. Does any person provide “work,” as defined in the bill, at the organization’s owned or leased location? “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. The term does not include noncommercial activities performed by members of a membership association.
 - If “yes” – no smoking
 - If “no” – smoking permitted
- I. Smoking-cessation programs approved by the Florida Department of Health
 - J. Medical or scientific research

III. SIGNS & POLICIES:

- A. Until July 1, 2005, the person in charge of a workplace that prior to Amendment 6 was required to post signs stating that smoking is permitted (previous to adoption of Article X, Section 20) must continue to post signs stating that smoking is not permitted in the enclosed indoor workplace.
- B. The proprietor or other person in charge of an enclosed indoor workplace must develop and implement a policy regarding the smoking prohibitions and what to do when someone sees a violation.
- C. The person in charge of an airport terminal must post a sign stating that no smoking is permitted except in the designated customs smoking room.
- D. The person in charge of a place where a Department of Health-approved smoking-cessation program, medical research or scientific research program is conducted must post signs stating that smoking is permitted only for such purposes.
- E. Licensed stand-alone bars must post signs at the entrance stating that smoking is permitted in the establishment.
- F. Signs must be conspicuously posted.
- G. Size of letters on the signs must be easily read.
- H. The person in charge of the premises determines color, design and precise place of posting.

IV. PENALTIES

- A. Individual who smokes:
 1. First violation — civil penalty up to \$100
 2. Subsequent violation — civil penalty up to \$500



- B. Stand-alone bar proprietor who does not comply with the food service criteria, fails to supply the required affidavits and attestations, or otherwise violates F.S. 386 applicable law:
1. First violation — warning or fine up to \$500, or both
 2. Second violation within 2 years after first violation — fine of \$500 to \$2,000
 3. Third or subsequent violation within two years after first violation — suspension up to 30 days of the right to maintain a stand-alone bar in which tobacco smoking is permitted, and fine of \$500 to \$2,000
 4. Fourth or subsequent violation — suspension up to 60 days of the right to maintain a stand-alone bar in which tobacco smoking is permitted, fine of \$500 to \$2,000, or revocation of the right to maintain a stand-alone bar in which tobacco smoking is permitted.
- C. Noncompliant workplace proprietor or person in charge:
1. 30-day Notice to Comply
 2. Failure to comply after 30-day Notice to Comply:
 - First offense — Civil penalty of \$250 to \$750
 - Second and subsequent offenses — Civil penalty of \$500 to \$2,000
 3. Refusal to comply after assessment of penalty: Complaint may be filed in circuit court by Division of Hotels and Restaurants or Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

For more information, or to report violations of the Florida Clean Indoor Air Act, please call 1-800-337-3742.