

CHAPTER 386

PARTICULAR CONDITIONS AFFECTING PUBLIC HEALTH

PART I SANITARY NUISANCES (ss. 386.01-386.051)

PART II INDOOR AIR; TOBACCO SMOKE (ss. 386.201-386.211)

PART I

SANITARY NUISANCES

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386.01 Sanitary nuisance.—A sanitary nuisance is the commission of any act, by an individual, municipality, organization, or corporation, or the keeping, maintaining, propagation, existence, or permission of anything, by an individual, municipality, organization, or corporation, by which the health or life of an individual, or the health or lives of individuals, may be threatened or impaired, or by which or through which, directly or indirectly, disease may be caused.

History.—s. 1, ch. 4346, 1895; GS 1153; RGS 2157; CGL 3386.

386.02 Duty of Department of Health and Rehabilitative Services.—The Department of Health and Rehabilitative Services, upon request of the proper authorities, or of any three responsible resident citizens, or whenever it may seem necessary to the department, shall investigate the sanitary condition of any city, town, or place in the state; and if, upon examination, the department shall ascertain the existence of any sanitary nuisance as herein defined, it shall serve notice upon the proper party or parties to remove or abate the said nuisance or, if necessary, proceed to remove or abate the said nuisance in the manner provided in s. 823.01.

History.—s. 11, ch. 4346, 1895; GS 1154; RGS 2158; CGL 3387, ss. 19, 35, ch. 69-106; s. 148, ch. 77-147.

386.03 Notice to remove nuisances; authority of Department of Health and Rehabilitative Services and local health authorities.—

(1) The Department of Health and Rehabilitative Services, upon determining the existence of anything or things herein declared to be nuisances by law, shall notify the person or persons committing, creating, keeping, or maintaining the same, to remove or cause to be removed, the same within 24 hours, or such other reasonable time as may be determined by the department, after such notice be duly given.

(2) If the sanitary nuisance condition is not removed by such person or persons within the time prescribed in said notice, the department, its agents or deputies or local health authorities, may within the county where the nuisance exists, remove, cause to remove, or prevent

the continuing sanitary nuisance condition in the following manner:

(a) Undertake required correctional procedures, including the removal of same if necessary; the cost or expense of such removal or correctional procedures shall be paid by the person or persons committing, creating, keeping, or maintaining such nuisances; and if the said cost and expense thus accruing shall not be paid within 10 days after such removal, the same shall be collected from the person or persons committing, creating, keeping, or maintaining such nuisances, by suit at law; but this paragraph shall not authorize the department to alter, change, demolish, or remove any machinery, equipment, or facility designed or used for the processing or disposing of liquid or smoke effluent of a manufacturing plant.

(b) Institute criminal proceedings in the county court in the jurisdiction of which the condition exists against all persons failing to comply with notices to correct sanitary nuisance conditions as provided in this chapter.

(c) Institute legal proceedings authorized by the department as set forth in s. 381.0012.

(d) Institute administrative proceedings authorized by the department as set forth in s. 381.0061.

History.—s. 12, ch. 4346, 1895; GS 1155; RGS 2159; CGL 3388; s. 1, ch. 63-64; ss. 19, 35, ch. 69-106; s. 1, ch. 77-119; s. 149, ch. 77-147; s. 5, ch. 80-351; s. 53, ch. 91-297.

386.041 Nuisances injurious to health.—

(1) The following conditions existing, permitted, maintained, kept, or caused by any individual, municipal organization, or corporation, governmental or private, shall constitute prima facie evidence of maintaining a nuisance injurious to health:

(a) Untreated or improperly treated human waste, garbage, offal, dead animals, or dangerous waste materials from manufacturing processes harmful to human or animal life and air pollutants, gases, and noisome odors which are harmful to human or animal life.

(b) Improperly built or maintained septic tanks, water closets, or privies.

(c) The keeping of diseased animals dangerous to human health.

(d) Unclean or filthy places where animals are slaughtered.

(e) The creation, maintenance, or causing of any condition capable of breeding flies, mosquitoes, or other arthropods capable of transmitting diseases, directly or indirectly to humans.

(f) Any other condition determined to be a sanitary nuisance as defined in s. 386.01.

(2) The Department of Health and Rehabilitative Services, its agents and deputies, or local health authorities are authorized to investigate any condition or alleged

nuisance in any city, town, or place within the state, and if such condition is determined to constitute a sanitary nuisance, they may take such action to abate the said nuisance condition in accordance with the provisions of this chapter.

History.—s. 2, ch. 63-64; ss. 19, 35, ch. 69-106; s. 150, ch. 77-147.

386.051 Nuisances injurious to health, penalty.—

Any person found guilty of creating, keeping, or maintaining a nuisance injurious to health shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 63-64; s. 337, ch. 71-136.

PART II

INDOOR AIR; TOBACCO SMOKE

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386.201 Short title.—This part may be cited as the "Florida Clean Indoor Air Act."

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

386.202 Legislative intent.—The purpose of this part is to protect the public health, comfort, and environment by creating areas in public places and at public meetings that are reasonably free from tobacco smoke by providing a uniform statewide maximum code. 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.

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

386.203 Definitions.—As used in this part:

- (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 which seat more than 50 persons;
- (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;
- (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.

(4) "Smoking" means possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.

(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 and Rehabilitative Services.

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

History.—s. 3, ch. 85-257; s. 1, ch. 89-266; s. 3, ch. 92-185; s. 42, ch. 94-218.

386.204 Prohibition.—A person may not smoke in 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.

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

386.205 Designation of smoking areas.—

(1) Smoking areas may be designated by the person in charge of a public place. If a smoking area is designated, existing physical barriers and ventilation systems shall be used 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 public health unit, 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 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) 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. This square footage limitation does not apply to restaurants as defined in s. 386.203(1)(p). However, such a restaurant must ensure that no more than 65 percent of the seats existing in its dining room at any time are 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.

History.—s. 5, ch. 85-257; s. 5, ch. 92-185.

386.206 Posting of signs.—The person in charge of a public place shall conspicuously post, or cause to be posted, in any area designated as a smoking area signs stating that smoking is permitted in such area. Each sign posted pursuant to this section 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.

History.—s. 6, ch. 85-257; s. 6, ch. 92-185; s. 687, ch. 95-148.

386.207 Administration; enforcement; civil penalties; exemptions.—

(1) The department or the division shall enforce 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 of ss. 386.205 and 386.206 found during its periodic inspections conducted pursuant to its regulatory authority. The department or the division, upon notification of observed violations of ss. 386.205 and 386.206, shall issue to the proprietor or other person in charge of such public place a notice to comply with ss. 386.205 and 386.206. If such person fails to comply within 30 days after receipt of such notice, the department or the division shall assess a civil penalty against him or her not to exceed \$100 for the first violation and not to exceed \$500 for each subsequent violation. The imposition of such fine shall be in accordance with the provisions of chapter 120. If a person refuses to comply with ss. 386.205 and 386.206, after having been assessed such penalty, the department or the division may file a complaint in the circuit court of the county in which 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-case basis where it determines that substantial good faith efforts have been made to comply or that emergency or extraordinary circumstances exist.

(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.

386.208 Penalties.—Any person who violates s. 386.204 commits a noncriminal violation as 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.

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

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.

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

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 shall include a statement to the effect that Florida is a clean indoor air state and that smoking is allowed only in designated areas.

History.—s. 9, ch. 92-185.

CHAPTER 387

POLLUTION OF WATERS

- 387.01 "Underground waters of the state" defined.
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 387.07 Penalty for interference with water supply.
 387.08 Penalty for deposit of deleterious substance in lake, river, stream, or ditch.
 387.09 Septic tanks; construction requirements.
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387.01 "Underground waters of the state" defined.

The term "underground waters of the state," when used in this chapter, shall include all underground streams and springs and underground waters within the borders of the state, whether flowing in underground channels or passing through the pores of the rocks.

History.—s. 1, ch. 6443, 1913; RGS 2160; CGL 3389.

387.02 Permit required for draining surface water or sewage into underground waters of state.—No municipal corporation, private corporation, person, or persons within the state shall use any cavity, sink, driven or drilled well now in existence, or sink any new well within the corporate limits, or within 5 miles of the corporate limits, of any incorporated city or town, or within any unincorporated city, town, or village, or within 5 miles thereof, for the purpose of draining any surface water or discharging any sewage into the underground waters of the state, without first obtaining a written permit from the Department of Health and Rehabilitative Services.

History.—s. 2, ch. 6443, 1913; RGS 2161; CGL 3390; ss. 19, 35, ch. 69-106; s. 151, ch. 77-147.

387.03 Permits revocable and subject to change; filed with clerk.—

(1) Every permit for the discharge of sewage or surface water shall be revocable or subject to modification or change by the Department of Health and Rehabilitative Services. In addition to any notice required by chapter 120, the department shall serve notice of its intended action by publication for 2 weeks in a newspaper published in the county in which said well, cavity, or sink is located.

(2) All such permits, before becoming operative, shall be filed in the office of the clerk of the circuit court of the county in which such permit has been granted.

History.—s. 3, ch. 6443, 1913; RGS 2162; CGL 3391; ss. 19, 35, ch. 69-106; s. 152, ch. 77-147; s. 19, ch. 78-95.

387.04 "Sewage" defined.—For the purpose of this chapter, "sewage" shall be defined as any substance that contains any of the waste products, excrement or other discharge from the bodies of human beings or animals.

History.—s. 4, ch. 6443, 1913; RGS 2163; CGL 3392.

387.05 Sewage or surface drainage into underground waters of state to be discontinued within 10 days after order by Department of Health and Rehabilitative Services.—Every individual, municipal corporation, private corporation, or company shall discontinue the discharge within the corporate limits or within 5 miles of the corporate limits of any incorporated city or town, or within any unincorporated city, town, or village or within 5 miles thereof, of sewage or surface drainage into any of the underground waters of the state within 10 days after having been so ordered by the Department of Health and Rehabilitative Services.

History.—s. 5, ch. 6443, 1913; RGS 2164; CGL 3393; ss. 19, 35, ch. 69-106; s. 153, ch. 77-147.

387.06 Penalty for violation of provisions of this chapter.—Any municipal corporation, private corporation, person, or persons that shall discharge sewage or surface drainage, or permit the same to flow into the underground waters of this state, contrary to the provisions of this chapter, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The doing of the prohibited act for each day shall constitute a separate offense.

History.—s. 6, ch. 6443, 1913; RGS 5525; CGL 7691; s. 338, ch. 71-136.

387.07 Penalty for interference with water supply. Whoever willfully or maliciously defiles, corrupts, or makes impure any spring or other source of water reservoir, or destroys or injures any pipe, conductor of water, or other property pertaining to an aqueduct, or aids or abets in any such trespass, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 4, sub-ch. 9, ch. 1637, 1868; RS 2665; GS 3603; RGS 5523; CGL 7689; s. 339, ch. 71-136.

387.08 Penalty for deposit of deleterious substance in lake, river, stream, or ditch.—Any person, firm, company, corporation, or association in this state, or the managing agent of any person, firm, company, corporation, or association in this state, or any duly elected, appointed, or lawfully created state officer of this state, or any duly elected appointed or lawfully created officer of any county, city, town, municipality, or municipal government in this state, who shall deposit, or who shall permit or allow any person or persons in their employ or under their control, management, or direction to deposit in any of the waters of the lakes, rivers, streams, and ditches in this state, any rubbish, filth, or poisonous or deleterious substance or substances, liable to affect the health of persons, fish, or livestock, or place or deposit any such deleterious substance or substances in any place where the same may be washed or infiltrated into any of the waters herein named, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083; provided, further, that the carrying into effect of the provisions of this section shall be under the supervision of the Department of Health and Rehabilitative Services.

History.—s. 1, ch. 5954, 1909; RGS 5524; CGL 7690; ss. 19, 35, ch. 69-106; s. 340, ch. 71-136; s. 154, ch. 77-147.

387.09 Septic tanks; construction requirements.—

Where soil and site conditions are suitable for the use of septic tank systems, metal septic tanks constructed in conformance with the requirements set by the Federal Housing Administration may be used; provided that no metal septic tanks shall be used where cinders are used as backfill material or where the groundwater contains sufficient salt to be corrosive.

History.—s. 1, ch. 28309, 1953.

387.10 Proceedings for injunction.—

(1) In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the Department of Health and Rehabilitative Services or an appropriate officer of the department is authorized to make application for injunction to a circuit judge, and such circuit judge shall have jurisdiction upon a hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this chapter or from failing or refusing to

comply with the requirements of this chapter, such injunction to be issued without bond provided, however, no temporary injunction without bond shall be issued except after a hearing of which the respondent or respondents has or have been given not less than 7 days prior notice, and no temporary injunction without bond, which shall limit or prevent operations of an industrial, manufacturing, or processing plant shall be issued, unless at the hearing, it shall be made to appear by clear, certain, and convincing evidence that irreparable injury will result to the public from the failure to issue the same.

(2) In the event of the issue of a temporary injunction or restraining order hereunder without bond, then the state, in event said injunction or restraining order was improperly, erroneously, or improvidently granted, shall be liable in damages and to the same extent as if said injunction or restraining order had been issued upon application of a private litigant instead of a public litigant, and the state hereby waives its sovereign immunity and consents to be sued in any such case.

History.—ss. 1, 2, ch. 57-216; ss. 19, 35, ch. 69-106; s. 155, ch. 77-147.