

SMOKING BAN UPDATE

Governor Bush has signed into law House Bill 63-A, which implements the new constitutional ban on smoking in indoor workplaces. This new law becomes effective July 1, 2003, and will have a major impact on Florida businesses that currently allow smoking (such as bars, restaurants, bowling alleys, etc.). While some of the details are still being worked out, the following frequently asked questions should provide some guidance to businesses needing to know how to implement the new smoking ban.

- **When does the new ban on indoor workplace smoking begin?** July 1, 2003
- **Where will smoking be allowed after July 1, 2003?**
 - Stand-alone bars (see below)
 - Outdoor patios (see below)
 - Membership association facilities used exclusively for non-commercial activity if no person is engaged in work
 - Private residences not being used commercially for childcare or adult care
 - Retail tobacco shops
 - Hotel guest rooms designated as smoking rooms
 - Approved smoking cessation programs
 - Medical or scientific research
 - Airport smoking lounges under control of U.S. Customs and Border Protection
- **When will enforcement begin? Who will enforce the smoking ban?** If the business is licensed by the Division of Hotels & Restaurants or the Division of Alcoholic Beverages & Tobacco, the Department of Business & Professional Regulation will take enforcement action. (This applies to bars, restaurants, hotels, and the like.)

For any other indoor workplace (such as offices), the Florida Department of Health will handle the enforcement action.

- **How will complaints be filed?** If the establishment is licensed by the Department of Business and Professional Regulation, the complaint can be filed with the Department:
 - On the Department's web site at www.state.fl.us/dbpr;
 - By contacting the Department's Customer contact Center at 850-487-1395; or
 - By mail to the Department of Business and Professional Regulation, 1940 North Monroe St, Tallahassee, FL 32399-1021.

For other enclosed workplaces, complaints will be handled by the Florida Department of Health at 1-800-337-3742.

- **What happens if there is a complaint about smoking in my establishment?** The Department will review all complaints regarding alleged violations at licensed premises. If the complaint is substantiated, the Department may take enforcement action, including monetary penalties.
- **What are the penalties for violating the ban?** Please note penalties are on the owner of the establishment, **not** for the smoker who violates the law.
 - First violation: warning and/or fine of up to \$500;
 - Second violation: if within 2 years of the first violation, a fine of not less than \$500 or more than \$2000;
 - Third violation: if within 2 years of the first violation, a suspension of the smoking designation not to exceed 30 days and a fine of not less than \$500 or more than \$2000;
 - Fourth and subsequent violations: 60-day suspension of the smoking designation and a fine of not less than \$500 or more than \$2000.
- **What responsibility does the business have?** The proprietor of any indoor workplace must

develop and implement a policy regarding the smoking prohibitions in law. The policy should include procedures to be taken the proprietor witnesses or is made aware of a violation of the smoking law and must include a policy that prohibits an employee from smoking in the indoor workplace. Please note: this requirement applies to all indoor workplaces and offices, not just restaurants and bars.

- **If a customer refuses to stop smoking in an enclosed indoor workplace, what should the owner/operator do?** The owner/operator should seek assistance from local law enforcement.
- **What is a stand-alone bar?** Any licensed premises that predominantly serves alcoholic beverages for consumption on the premises and in which the serving of food, if any, is merely incidental (i.e., less than 10% of the gross revenues). The licensed premises cannot be located in or share any common entryway or indoor area with any other business.
- **How does a business become a stand-alone bar?** To qualify, a business with an active alcoholic beverage license permitting consumption on the premises must notify the Division of Alcoholic Beverages of its intent to allow smoking. There is not fee to add this designation to your alcoholic beverage license.
- **What are the conditions or restrictions for a stand-alone bar to allow smoking?** No more than 10 percent of the gross revenues of the business may be derived from the retail sale of food consumed on the premises.
- **May free food, such as a happy hour buffet, be offered at an establishment with a smoking designation?** Only customary bar snacks (like popcorn or peanuts) may be given away. All other food must be paid for by a patron at a charge that reasonable approximates the retail value of the food. All food paid for by patrons must be reported in the establishment's food sales.
- **What is an outdoor patio?** An outdoor patio is a place NOT predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of uncovered openings, screened openings, or open/closed windows, doors, or the like. A place is "predominantly" bounded by physical barriers when BOTH of the following conditions exist:

- It is more than 50% covered from above by a physical barrier that excludes rain, **and**
- More than 50% of the combined surface area of its sides is covered by closed physical barriers.
- **If a licensed premises, either a stand-alone bar or a food service establishment, serves food in an outside seating area, is smoking permitted there?** Yes. However, if the area is more than 50% covered from above by a physical barrier that excludes rain **and** if more than 50% of the combined surface area of its sides is covered by closed physical barriers, smoking is not permitted in the area.
- **Can I allow my customers to bring food onto my premises if I have a stand-alone bar with a smoking designation?** No. All food consumed on the licensed premises must be provided by the licensed operator.
- **Do I have to post certain signs?** Yes. For stand-alone bars with smoking designations, signs stating that smoking is permitted must be posted at each entrance. It is up to the establishment's discretion to determine the color and design of the signs. Enclosed indoor workplaces which had designated smoking areas previously will have to post a sign stating that smoking is now prohibited.
- **Who do I contact for more information?** If you are a hotel/restaurant/bar licensed by the Florida Department of Business and Professional Regulation, contact them at 850-487-1395 or email at Call.Center@dbpr.state.fl.us. For other workplaces (such as offices), call the Florida Department of Health at 1-800-337-3742.

WORKERS' COMP UPDATE

We have received numerous calls from members asking about the exemption changes that we explained in last months' newsletter. As this newsletter went to press, Governor Bush still had not signed the workers' compensation law, so it has not yet become effective. This issue affects many of our members, and we are currently meeting with the Division of Workers' Compensation to try and get some details on how the exemption changes will be implemented. Please watch for updates on our web site at www.fuba.org.