

**Constitution Revision Commission
General Provisions Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 65

Relating to: MISCELLANEOUS, Workplaces without tobacco smoke or vapor

Introducer(s): Commissioner Carlton and others

Article/Section affected:

Date: November 22, 2017

REFERENCE	ACTION
1. <u>GP</u>	<u>Pre-meeting</u>

I. SUMMARY:

The proposal amends Section 20 of Article X of the Florida Constitution to establish a general prohibition on the use of vapor generating electronic devices in enclosed indoor workplaces.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Indoor Smoking Ban

Section 20 of Article X currently only prohibits the smoking of tobacco in enclosed indoor work places.¹ This prohibition was added by general election in 2002,² before tobacco vaporizers were popular or even on the market in the U.S.³

There are four exceptions to the prohibition, including:

- Private residences whenever the residence is not being used commercially to provide child care, adult care, health care, or combination thereof;
- Retail tobacco shops;
- Designated smoking guest rooms at hotels and other public lodging establishments; and
- Stand-alone bars.

Currently, s. 386.204, F.S., prohibits a person from smoking in an enclosed indoor workplace, except as otherwise provided in s. 386.2045, F.S. Section 386.2045, F.S., delineates specific exceptions to

¹ Fla. Const. Art. X, § 20.

² *Id.*

³ Pepper, Jessica K. & Noel T. Brewer, *Electronic Nicotine Delivery System (Electronic Cigarette) Awareness, Use, Reactions and Beliefs: a Systematic Review*, 23 TOBACCO CONTROL, 375 (2013).

enclosed workplaces for certain locations where tobacco smoking may be permitted, including: private residences, retail tobacco shops, designated smoking guest rooms, stand-alone bars, rooms designated for smoking cessation and medical or scientific research, and customs smoking rooms in airport in-transit lounges.

Vaping Products

A systematic review of the health risks from passive exposure to such vapor concluded that “the absolute impact from [second-hand] exposure to [tobacco vapor] has the potential to lead to adverse health effects.”⁴

E-cigarettes have simply not been around long enough to determine their long-term health effects. However, studies have shown that probable cancer-causing chemicals, such as formaldehyde and acetaldehyde, are measurable in some e-cigarette vapor.⁵ The flavoring can contain diacetyl, a chemical linked to serious lung disease.⁶ The vapor has also been found to contain volatile organic compounds such as benzene, and heavy metals, such as nickel, tin, and lead.⁷ Scientists are still working to understand more fully the health effects and harmful doses of e-cigarette contents when they are heated and turned into an aerosol, both for active users who inhale from a device and for those who are exposed to the aerosol secondhand.⁸ There are more than 460 brands on the market,⁹ which vary widely in chemicals used and in the amount of nicotine they deliver.¹⁰

B. EFFECT OF PROPOSED CHANGES:

The proposal prohibits vapor generating electronic devices in enclosed indoor workplaces, just as smoking tobacco is prohibited. The proposal also establishes vapor-generating device retailers as an excepted location where use of vapor-generating electronic devices may be permitted.

The proposal defines “vapor-generating electronic device” to mean any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of a solution or other substance intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product; and defines “vapor-generating electronic device retailer” to mean any enclosed indoor workplace dedicated to or predominantly for the retail sale of vapor-generating electronic devices and

⁴ Hess, Isabel MR., Lachireddy, K., & Capon, A. *A Systematic Review of the Health Risks From Passive Exposure to Electronic Cigarette Vapor*. 26 PUBLIC HEALTH RES. PRACT. 2 (2016).

⁵ U.S. National Library of Medicine National Institutes of Health. *Safety evaluation and risk assessment of electronic cigarettes as tobacco cigarette substitutes: a systematic review*. Ther Adv Drug Saf. 2014.

⁶ <https://e-cigarettes.surgeongeneral.gov/knowtherisks.html> (last visited 11/22/17).

⁷ *Id.*

⁸ *Id.*

⁹ British Medical Journal. *Four hundred and sixty brands of e-cigarettes and counting: implications for product regulation*. (12 May 2014). http://tobaccocontrol.bmj.com/content/23/suppl_3/iii3.full (last visited 11/22/17).

¹⁰ World Health Organization (WHO). *Questions and answers on electronic cigarettes or electronic nicotine delivery systems (ENDS)*. (10 Jul 2013). http://www.who.int/tobacco/communications/statements/electronic_cigarettes/en/index.html (last visited 11/22/17).

components, parts, and accessories for such products, in which the sale of other products or services is merely incidental.

The proposal does not preclude or prohibit:

- the adoption of ordinances that impose more restrictive regulation of the use of vapor-generating electronic devices than is provided in the proposal;
- an owner, lessee, or other person in charge of the use of an indoor workplace from further prohibiting or limiting the use of vapor-generating electronic devices; or
- the legislature from enacting any law constituting or allowing a more restrictive regulation of the use of vapor-generating electronic devices.

The proposal instructs the legislature to adopt legislation to implement the proposal in the next legislative session after voter approval with the implementing language to take effect no later than July 1 of the year following voter approval.

C. FISCAL IMPACT:

Minimal impact. There is already an enforcement mechanism under the existing law. The Department of Business and Professional Regulation does not anticipate a fiscal impact to state or local government.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.