

[Skip to Navigation](#) | [Skip to Main Content](#) | [Skip to Site Map](#)

[MyFloridaHouse.gov](#) | [Mobile Site](#)

Senate Tracker: [Sign Up](#) | [Login](#)

Go to Bill: Bill # Year: 2021

Find Statutes: Year: 2020 Search Term Within Chapter: Chapter

The Florida Senate

- [Home](#)

Daily Digest

[Calendar](#)

[Filed Today](#)

[Bill Actions](#)

Spotlights

1. Organization Session
2. [COVID-19](#)
3. [Reemployment Assistance](#)

- [Senators](#)

[Senator List](#)

[Find Your Legislators](#)

[District Maps](#)

[Vote Disclosures](#)

- [Committees](#)

[Committee List](#)

[Committee Publications](#)

- [Session](#)

[Bills](#)

[Calendars](#)

[Journals](#)

[Appropriations](#)

[Conferences](#)

[Reports](#)

[Executive Appointments](#)

[Executive Suspensions](#)

[Redistricting](#)

- [Laws](#)

[Statutes](#)

[Help Searching](#)

[Statutes](#)

[Constitution](#)

[Laws of Florida](#)

[Order - Legistore](#)

- [Media](#)

[Video Broadcast](#)
[Schedule](#)

[Press Releases](#)

[Publications](#)

[Videos](#)

[Topics](#)

- [About](#)

[Employment](#)

[Accessibility](#)

[Visit Us](#)

[Contact Us](#)

[Page Program](#)

- [Offices](#)

[President's Office](#)

[Majority Office](#)

[Minority Office](#)

[Secretary's Office](#)

- [Reference](#)

[Glossary](#)

[FAQ](#)

[Help](#)

[Links](#)

[Search Tips](#)

[Publications](#)

[Rules](#)

[Handbooks](#)

[Advisory Opinions](#)

[Public Records](#)

- [Tracker](#)

[Login](#)

[Sign Up](#)

[Tracker Help](#)

[Home](#) > [Laws](#) > [2020 Florida Statutes](#) > [Title XXIX](#) > Chapter 386

[See All 2021 Bills that Cite Sections in this Chapter](#)

Quick Links

- [Table Tracing Session Laws to Florida Statutes \(2020\)](#) [PDF]
- [Table of Section Changes \(2020\)](#) [PDF]
- [Preface to the Florida Statutes \(2020\)](#) [PDF]
- [Index to Special and Local Laws \(1971-2020\)](#) [PDF]
- [General Laws Conversion Table \(2020\)](#) [PDF]
- [Florida Statutes Definitions Index \(2020\)](#) [PDF]
- [Index to Special and Local Laws \(1845-1970\)](#) [PDF]
- [Statute Search Tips](#)

2020 Florida Statutes

CHAPTER 386
PARTICULAR CONDITIONS AFFECTING PUBLIC HEALTH

PART I
SANITARY NUISANCES

(ss. 386.01-386.051)

PART II
INDOOR AIR: SMOKING AND VAPING
(ss. 386.201-386.2125)

PART I
SANITARY NUISANCES

386.01 Sanitary nuisance.

386.02 Duty of Department of Health.

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

386.041 Nuisances injurious to health.

386.051 Nuisances injurious to health, penalty.

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.—The Department of Health, 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; s. 75, ch. 97-101.

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

(1) The Department of Health, 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; s. 76, ch. 97-101.

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, 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; s. 77, ch. 97-101.

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: SMOKING AND VAPING

386.201 Popular name.

386.202 Legislative intent.

386.203 Definitions.

386.204 Prohibition.

386.2045 Enclosed indoor workplaces; specific exceptions.

386.205 Customs smoking rooms.

386.206 Posting of signs; requiring policies.

386.207 Administration; enforcement; civil penalties.

386.208 Penalties.

386.209 Regulation of smoking preempted to state.

386.211 Public announcements in mass transportation terminals.

386.212 Smoking and vaping prohibited near school property; penalty.

386.2125 Rulemaking.

386.201 Popular name.—This part may be cited by the popular name the “Florida Clean Indoor Air Act.”

History.—s. 1, ch. 85-257; s. 1, ch. 92-185; s. 1, ch. 2003-398.

386.202 Legislative intent.—The purpose of this part is to protect people from the health hazards of secondhand tobacco smoke and vapor and to implement the Florida health initiative in s. 20, Art. X of the State Constitution. It is the intent of the Legislature to not inhibit, or otherwise obstruct, medical or scientific research, or smoking or vaping cessation programs approved by the Department of Health.

History.—s. 2, ch. 85-257; s. 2, ch. 92-185; s. 2, ch. 2003-398; s. 2, ch. 2019-14.

386.203 Definitions.—As used in this part:

(1) “Commercial” use of a private residence means any time during which the owner, lessee, or other person occupying or controlling the use of the private residence is furnishing in the private residence, or causing or allowing to be furnished in the private residence, child care, adult care, or health care, or any combination thereof, and receiving or expecting to receive compensation therefor.

(2) “Common area” means a hallway, corridor, lobby, aisle, water fountain area, restroom, stairwell, entryway, or conference room in a customs area of an airport terminal under the authority and control of the Bureau of Customs and Border Protection of the United States Department of Homeland Security.

(3) “Department” means the Department of Health.

- (4) “Designated guest rooms at public lodging establishments” means the sleeping rooms and directly associated private areas, such as bathrooms, living rooms, and kitchen areas, if any, rented to guests for their exclusive transient occupancy in public lodging establishments, including hotels, motels, vacation rentals, transient apartments, transient lodging establishments, roominghouses, boardinghouses, bed and breakfast inns, and the like; and designated by the person or persons having management authority over such public lodging establishment as rooms in which smoking or vaping may be authorized.
- (5) “Enclosed indoor workplace” means any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of or include, without limitation, uncovered openings; screened or otherwise partially covered openings; or open or closed windows, jalousies, doors, or the like. A place is “predominantly” bounded by physical barriers during any time when both of the following conditions exist:
- (a) It is more than 50 percent covered from above by a physical barrier that excludes rain, and
 - (b) More than 50 percent of the combined surface area of its sides is covered by closed physical barriers. In calculating the percentage of side surface area covered by closed physical barriers, all solid surfaces that block air flow, except railings, must be considered as closed physical barriers. This section applies to all such enclosed indoor workplaces and enclosed parts thereof without regard to whether work is occurring at any given time.

The term does not include any facility owned or leased by and used exclusively for noncommercial activities performed by the members and guests of a membership association, including social gatherings, meetings, dining, and dances, if no person or persons are engaged in work as defined in this section.

- (6) “Essential services” means those services that are essential to the maintenance of any enclosed indoor room, including, but not limited to, janitorial services, repairs, or renovations.
- (7) “Membership association” means a charitable, nonprofit, or veterans’ organization that holds a current exemption under s. 501(c)(3), (4), (7), (8), (10), or (19) or s. 501(d) of the Internal Revenue Code.
- (8) “Physical barrier” includes an uncovered opening; a screened or otherwise partially covered opening; or an open or closed window, jalousie, or door.
- (9) “Retail tobacco shop” means any enclosed indoor workplace dedicated to or predominantly for the retail sale of tobacco, tobacco products, and accessories for such products, in which the sale of other products or services is merely incidental. Any enclosed indoor workplace of a business that manufactures, imports, or distributes tobacco products or of a tobacco leaf dealer is a business dedicated to or predominantly for the retail sale of tobacco and tobacco products when, as a necessary and integral part of the process of making, manufacturing, importing, or distributing a tobacco product for the eventual retail sale of such tobacco or tobacco product, tobacco is heated, burned, or smoked or a lighted tobacco product is tested.
- (10) “Secondhand smoke,” also known as environmental tobacco smoke (ETS), means smoke emitted from lighted, smoldering, or burning tobacco when the smoker is not inhaling; smoke emitted at the mouthpiece during puff drawing; and smoke exhaled by the smoker.
- (11) “Smoking” means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.
- (12) “Stand-alone bar” means any licensed premises devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises; in which the serving of food, if any, is merely incidental to the consumption of any such beverage; and the licensed premises is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace, including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue. A place of business constitutes a stand-alone bar in which the service of food is merely incidental in accordance with this subsection if the licensed premises derives no more than 10 percent of its gross revenue from the sale of food consumed on the licensed premises.
- (13) “Vape” or “vaping” means to inhale or exhale vapor produced by a vapor-generating electronic device or to possess a vapor-generating electronic device while that device is actively employing an electronic, a chemical, or a mechanical means designed to produce vapor or aerosol from a nicotine product or any other substance. The term does not include the mere possession of a vapor-generating electronic device.
- (14) “Vapor” means aerosolized or vaporized nicotine or other aerosolized or vaporized substance produced by a vapor-generating electronic device or exhaled by the person using such a device.

(15) “Vapor-generating electronic device” means 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.

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

(17) “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. “Work” includes, without limitation, any such service performed by an employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant, volunteer, and the like. The term does not include noncommercial activities performed by members of a membership association.

History.—s. 3, ch. 85-257; s. 1, ch. 88-266; s. 3, ch. 92-185; s. 42, ch. 94-218; s. 78, ch. 97-101; s. 2, ch. 2000-185; s. 3, ch. 2003-398; s. 10, ch. 2011-119; s. 3, ch. 2019-14.

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

History.—s. 4, ch. 85-257; s. 4, ch. 92-185; s. 4, ch. 2003-398; s. 4, ch. 2019-14.

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

(1) A private residence whenever it is not being used commercially to provide child care, adult care, or health care, or any combination thereof as defined in s. 386.203(1).

(2) A retail tobacco shop.

(3) A retail vape shop.

(4) A designated guest room at a public lodging establishment.

(5) A stand-alone bar that complies with all applicable provisions of the Beverage Law and this part.

(6) An enclosed indoor workplace, to the extent that tobacco smoking or vaping is an integral part of a smoking or vaping cessation program approved by the department, or medical or scientific research conducted therein. Each room in which tobacco smoking or vaping, or both, are authorized must comply with the signage requirements in s. 386.206.

(7) A customs smoking room in an airport in-transit lounge under the authority and control of the Bureau of Customs and Border Protection of the United States Department of Homeland Security subject to the restrictions contained in s. 386.205.

History.—s. 5, ch. 2003-398; s. 5, ch. 2019-14.

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

(1) Work, other than essential services, may not be performed in the room at any time.

(2) Tobacco smoking and vaping are prohibited while essential services are being performed in the room.

(3) Each customs smoking room must be enclosed by physical barriers that are impenetrable by secondhand tobacco smoke and vapor and must prevent the escape of the smoke and vapor into the enclosed indoor workplace.

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

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

History.—s. 5, ch. 85-257; s. 5, ch. 92-185; s. 79, ch. 97-101; s. 1, ch. 2000-185; s. 1, ch. 2000-370; s. 6, ch. 2003-398; s. 6, ch. 2019-14.

386.206 Posting of signs; requiring policies.—

(1) The proprietor or other person in charge of an enclosed indoor workplace must develop and implement a policy regarding the smoking and vaping prohibitions established in this part. The policy may include, but is not limited to, procedures to be taken when the proprietor or other person in charge witnesses or is made aware of a violation of s. 386.204 in the enclosed indoor workplace and must include a policy which prohibits an employee from smoking or vaping, or both, in the enclosed indoor workplace. In order to increase public awareness, the person in charge of an enclosed indoor workplace may, at his or her discretion, post signs to indicate that smoking or vaping, or both, are prohibited.

(2) The person in charge of an airport terminal that includes a designated customs smoking room must conspicuously post, or cause to be posted, signs stating that smoking and vaping are prohibited except in the designated customs smoking room located in the customs area of the airport. Each sign posted pursuant to this subsection must have letters of reasonable size which can be easily read. The color, design, and precise locations at which such signs are posted shall be left to the discretion of the person in charge of the premises.

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

History.—s. 6, ch. 85-257; s. 6, ch. 92-185; s. 687, ch. 95-148; s. 7, ch. 2003-398; s. 10, ch. 2006-2; s. 7, ch. 2019-14.

386.207 Administration; enforcement; civil penalties.—

(1) The department or the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation shall enforce this part based upon each department's specific areas of regulatory authority 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 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. The State Fire Marshal shall report to the department observed violations of this part found during its periodic inspections conducted under its regulatory authority.

(3) The department or the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation, upon notification of observed violations of this part, shall issue to the proprietor or other person in charge of such enclosed indoor workplace a notice to comply with this part. If the person fails to comply within 30 days after receipt of the notice, the department or the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation shall assess against the person a civil penalty of not less than \$250 and not more than \$750 for the first violation and not less than \$500 and not more than \$2,000 for each subsequent violation. The imposition of the fine must be in accordance with chapter 120. If a person refuses to comply with this part, after having been assessed such penalty, the department or the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation may file a complaint in the circuit court of the county in which the enclosed indoor workplace is located to require compliance.

(4) All fine moneys collected pursuant to this section shall be used by the department for children's medical services programs pursuant to 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; s. 8, ch. 2003-398; s. 8, ch. 2019-14.

386.208 Penalties.—Any person who violates s. 386.204 commits a noncriminal violation as defined 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; s. 9, ch. 2003-398; s. 9, ch. 2019-14.

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; however, school districts may further restrict smoking by persons on school district property. This section does not preclude the adoption of municipal

or county ordinances that impose more restrictive regulation on the use of vapor-generating devices than is provided in this part.

History.—s. 9, ch. 85-257; s. 8, ch. 92-185; s. 10, ch. 2003-398; s. 1, ch. 2011-108; s. 10, ch. 2019-14.

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 must include a statement to the effect that Florida is a clean indoor air state and that smoking and vaping are prohibited except as provided in this part.

History.—s. 9, ch. 92-185; s. 11, ch. 2003-398; s. 11, ch. 2019-14.

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

(1) It is unlawful for any person under 18 years of age to smoke tobacco or vape in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. This section does not apply to any person occupying a moving vehicle or within a private residence.

(2) A law enforcement officer may issue a citation in such form as prescribed by a county or municipality to any person violating this section. Any such citation must contain:

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

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

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

History.—s. 1, ch. 96-217; s. 12, ch. 2003-398; s. 12, ch. 2019-14.

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

History.—s. 13, ch. 2003-398; s. 13, ch. 2019-14.

[Home](#)

[Senators](#)

- [Senator List](#)
- [Find Your Legislators](#)
- [District Maps](#)
- [Vote Disclosures](#)

[Committees](#)

- [Committee List](#)
- [Committee Publications](#)

[Search](#)

- [Bill Search Tips](#)
- [Statute Search Tips](#)
- [Site Search Tips](#)

[Session](#)

- [Bills](#)
- [Calendars](#)
- [Journals](#)
- [Appropriations](#)
- [Conferences](#)
- [Reports](#)
- [Executive Appointments](#)
- [Executive Suspensions](#)
- [Redistricting](#)

[Laws](#)

- [Statutes](#)
- [Constitution](#)
- [Laws of Florida](#)
- [Order - Legistore](#)

[Media](#)

- [Press Releases](#)
- [Publications](#)
- [Videos](#)
- [Topics](#)
- [Video Broadcast Schedule](#)

[About](#)

- [Employment](#)
- [Visit Us](#)
- [Contact Us](#)
- [Page Program](#)

[Offices](#)

- [President's Office](#)
- [Majority Office](#)
- [Minority Office](#)
- [Secretary's Office](#)

[Reference](#)

- [Glossary](#)
- [FAQ](#)
- [Help](#)
- [Links](#)
- [Search Tips](#)
- [Publications](#)
- [Rules](#)

- [Handbooks](#)
- [Advisory Opinions](#)
- [Public Records](#)

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- [Login](#)
- [Sign Up](#)
- [Tracker Help](#)

[Plug-ins](#)

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