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## SENATE BILL NO. 1191

Senate Amendments in [ ] — February 7, 2005

A BILL to amend the Code of Virginia by adding in Chapter 2 of Title 32.1 an article numbered 15, consisting of sections numbered 32.1-73.8 through 32.1-73.14, and to repeal Chapter 28 (§§ 15.2-2800 through 15.2-2810) of Title 15.2 of the Code of Virginia, relating to the Virginia Indoor Clean Air Act; civil penalties.

Patrons Prior to Engrossment—Senators Mims, Edwards and Ticer

Referred to Committee on Education and Health

**Be it enacted by the General Assembly of Virginia:**

1. That the Code of Virginia is amended by adding in Chapter 2 of Title 32.1 an article numbered 15, consisting of sections numbered 32.1-73.8 through 32.1-73.14, as follows:

## Article 15.

## Virginia Indoor Clean Air Act.

## § 32.1-73.8. Definitions.

As used in this chapter unless the context requires a different meaning:

"Bar or lounge area" means any establishment or portion of an establishment the primary purpose of which is the service and consumption of alcoholic beverages and hors d'oeuvres and where the service and consumption of meals, if offered, is incidental or secondary to such primary purpose.

"Educational facility" means any building used for the instruction of enrolled students, including, but not limited to, any day-care center, nursery school, public or private school, college, university, medical school, law school, or career and technical education school.

"Health care facility" means any local or district health department, and any institution, place, building, or agency required to be licensed under Virginia law, including, but not limited to, any hospital, nursing facility or nursing home, boarding home, assisted living facility, supervised living facility, or ambulatory surgery center.

"Private function" means any gathering of persons for the purpose of deliberation, education, instruction, entertainment, amusement, or dining that is not intended to be open to the public and for which membership or specific invitation is a prerequisite to entry.

"Proprietor" means any person who owns, leases, operates, manages, or otherwise has control of any establishment, building, or enclosed area. The term "proprietor" includes corporations, associations, or partnerships as well as individuals.

"Public conveyance" or "public vehicle" means any air, land, or water vehicle used for the mass transportation of persons in intrastate travel for compensation, including, but not limited to, any airplane, train, bus, or boat that is not subject to federal smoking regulations.

"Public place" means any enclosed, indoor area used by the general public, including, but not limited to, any building owned or leased by the Commonwealth or any agency thereof or any locality, public conveyance or public vehicle, restaurant, educational facility, hospital, nursing facility or nursing home, other health care facility, library, retail store, auditorium, arena, theater, museum, concert hall, or other area used for a performance or an exhibit of the arts or sciences, or any meeting room.

"Recreational facility" means any enclosed, indoor area open to the general public for any recreational purpose, including, but not limited to, any indoor area used as a bowling alley, dance hall, gaming facility, poolroom, stadium, arena, skating rink, video game facility, or senior citizen recreational facility.

"Restaurant" means any building, structure, or area where food is available for eating on the premises, in consideration of payment, excluding a bar or lounge area, as defined herein, that is separately enclosed from any portion or the establishment in which smoking is prohibited.

"Secondhand smoke" means exhaled smoke and smoke emanating from any burning tobacco product or any other product while being smoked.

"Smoke" or "smoking" means the carrying or holding of any lighted pipe, cigar, or cigarette of any kind, or any other lighted smoking equipment, or the lighting, inhaling, or exhaling of smoke from a pipe, cigar, or cigarette of any kind.

"Specialty tobacco store" means a retail establishment that receives at least 50 percent of its gross receipts from the sale of tobacco products or accessories for tobacco products.

"Theater" means any indoor facility or auditorium open to the public that is primarily used or designed for the purpose of exhibiting any motion picture, stage production, musical recital or concert, dance performance, lecture, or other similar performance.

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59 § 32.1-73.9. *Smoking restrictions.*

60 *In order to reduce exposure to environmental tobacco smoke, smoking shall not be permitted and no*  
61 *person shall smoke in any indoor enclosed area to which the general public is invited or in which the*  
62 *general public is permitted, including, but not limited to:*

63 1. *Child day care facilities, regardless of whether required to be licensed or exempted from such*  
64 *licensure;*

65 2. *Common areas in apartment buildings, condominiums, and other multiple-unit residential facilities,*  
66 *including, but not limited to, exercise rooms, hallways, lobbies, meeting rooms, laundry rooms, and*  
67 *enclosed swimming and other recreational areas;*

68 3. *Common areas and at least 75 percent of all accommodations offered for lease or rent to the*  
69 *public in hotels and motels regulated by the Board of Health pursuant to Title 35.1. For the purposes of*  
70 *this chapter, common areas shall include, but not be limited to, exercise rooms, hallways, lobbies,*  
71 *meeting rooms, laundry rooms, and enclosed swimming and other recreational facilities;*

72 4. *Educational facilities;*

73 5. *Elevators;*

74 6. *Grocery stores; other retail stores, convenience stores, and indoor shopping malls;*

75 7. *Health care facilities;*

76 8. *Public conveyances;*

77 9. *Public places;*

78 10. *Public restrooms, lobbies, reception areas, hallways, and other common-use areas in any*  
79 *building;*

80 11. *Recreational facilities;*

81 12. *Restaurants licensed by the Board of Health pursuant to Title 35.1;*

82 13. *Theaters; and*

83 14. *Workplaces not exempted herein.*

84 § 32.1-73.10. *Exceptions; discretion of proprietors.*

85 A. *Unless otherwise provided herein, this chapter shall not apply to:*

86 1. *Private homes, private residences, and private automobiles, unless such homes, residences or*  
87 *vehicles are used as or in the operation of any establishment or facility in which smoking is prohibited*  
88 *by this chapter; [ however, smoking may be allowed in those areas of a private home used as a*  
89 *home-based business in which the public does not routinely enter, except that if the home-based business*  
90 *is child day care, no smoking shall be permitted while children are present. ]*

91 2. *Any indoor area where private functions are being held when the arrangements for the private*  
92 *functions are under the control of the sponsor of the function;*

93 3. *Any hotel or motel room clearly designated as a "smoking" room so long as such rooms do not*  
94 *exceed 25 percent of the total accommodations within the establishment that are offered for lease or*  
95 *rent to the public;*

96 4. *Any bar or lounge area, as defined in this chapter, which is separately enclosed from any*  
97 *establishment in which smoking is prohibited herein;*

98 5. *Specialty tobacco stores; and*

99 6. *Private separately enclosed office or work areas that are not entered by the general public in the*  
100 *normal course of business or use of the premises, unless a person who works in such private separately*  
101 *enclosed office or work area objects to smoking in such area.*

102 B. *This chapter shall not prevent or be construed to limit the right of any proprietor of any*  
103 *establishment excepted hereunder from prohibiting smoking in an establishment or private office or work*  
104 *area or the right of any principal or administrator of any educational facility, as defined in § 32.1-73.8,*  
105 *from adopting smoking prohibitions that are more stringent than the requirements of this chapter,*  
106 *including restrictions on smoking in areas that are not enclosed located on the educational facility's*  
107 *campus.*

108 § 32.1-73.11. *Posting of signs on buildings or areas in which smoking is permitted.*

109 *The proprietor of any building or area in which smoking is not prohibited by this chapter who*  
110 *allows smoking in any building or area or part thereof shall post and properly maintain signs in an*  
111 *appropriate place on such building or area, in a clear, conspicuous, and prominent manner, stating*  
112 *"Warning: Smoking Permitted." This section shall not be construed as requiring the posting of signs on*  
113 *private homes or residences or private vehicles unless used as or in the operation of any establishment*  
114 *or facility in which smoking is prohibited by this chapter.*

115 § 32.1-73.12. *Penalties.*

116 A. *No person shall smoke in any area in which public smoking is prohibited pursuant to this chapter.*  
117 *Any person who continues to smoke in such area after having been asked to refrain from smoking shall*  
118 *be subject to a civil penalty of not more than \$100. Any person who commits a subsequent offense shall*  
119 *be subject to a civil penalty of not more than \$250.*

120 B. *Any proprietor of any establishment, building, or area that is subject to the smoking restrictions*

*provided in this chapter who fails to comply with such restrictions shall be subject to a civil penalty of not more than \$200 for the first offense and \$500 for any subsequent offense.*

*C. Any law enforcement officer may issue a summons regarding a violation of this chapter.*

*§ 32.1-73.13. Enforcement.*

*The Board of Health and the Commissioner of Labor and Industry shall jointly promulgate such regulations as may be necessary and appropriate to enforce the provisions of this chapter.*

*The Board and the Commissioner shall annually report by January 15 of each year, on and after January 1, 2006, concerning their enforcement efforts for the previous year.*

*§ 32.1-73.14. Construction of chapter.*

*This chapter shall not be construed to permit smoking where it is otherwise prohibited by the proprietor of any establishment, building or area or by other applicable law.*

**2. That Chapter 28 (§§ 15.2-2800 through 15.2-2810) of Title 15.2 of the Code of Virginia is repealed.**

**3. That, notwithstanding the provisions of this act, the proprietor of any bar or lounge area licensed and operating on June 30, 2005, that is not separately enclosed from any establishment in which smoking is prohibited herein may continue, until July 1, 2006, to permit smoking in such bars and lounges in the same manner and to the same extent as permitted by Chapter 28 (§ 15.2-2800 et seq.) of Title 15.2 of the Code of Virginia as such law was in effect prior to July 1, 2005. The proprietor of such bar or lounge area shall, however, post a sign in compliance with § 32.1-73.11 of this act.**

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