074713326

HOUSE BILL NO. 2245

Offered January 10, 2007

Prefiled January 9, 2007

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 32.1-73.15, 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.

Patron—Howell, A.T.

Referred to Committee on General Laws

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 32.1-73.15 as follows:

Article 15.

Virginia Smoke Free Air Act.

§ 32.1-73.8. Definitions.

As used in this article, unless context requires a different meaning:

"Bar or lounge area" means any establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages.

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

"Healthcare facility" means any local or district health department, and any other office or institution, regardless of specialty or whether required to be or how licensed, that provides care or treatment to consumers of healthcare for physical or mental conditions or substance abuse on an outpatient or inpatient basis, including, but not limited to, any office or clinic delivering any dental, medical, or other health services such as physical therapy practices and weight control clinics; any hospital; any nursing facility or nursing home; any residential facility for children or adults such as group homes, campus style facilities, homes for the aging or chronically ill, assisted living facilities, continuing care facilities, supervised living facilities, and life-sharing communities; any laboratory or testing facility in which patients are seen, such as free-standing radiology and magnetic resonance imaging facilities; and all waiting rooms, hallways, private rooms, semiprivate rooms, and wards or floors within such office or institution.

"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 area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, healthcare facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, retail food production and marketing establishments, retail services establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. "Public place" shall include a private club when being used for a function to which the general public is invited; however, a private residence is not a "public place" unless being used as a child care, adult day care, or healthcare facility.

"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 eating establishment, including, but not limited to, fast food enterprises, coffee shops, cafeterias, and other entities licensed as such by the Board of Health, including a bar area within a restaurant.

"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 inhaling, exhaling, burning, or carrying or holding of any lighted cigar, cigarette, pipe, or any tobacco or other product in any manner or form.

"Specialty tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories in which the sale of other products is merely incidental.

"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.

§ 32.1-73.9. Smoking restrictions in public places.

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

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

2. Common areas and any room designated as "nonsmoking" offered for lease or rent to the public in hotels and motels regulated by the Board of Health pursuant to Title 35.1. For the purposes of this article, common areas shall include, but not be limited to, exercise rooms, hallways, lobbies, meeting rooms, laundry rooms, and enclosed swimming and other recreational facilities;

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

4. Educational facilities;

5. Elevators;

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

7. Health care facilities;

8. Public conveyances;

9. Public places;

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

11. Recreational facilities;

12. Restaurants;

13. Theaters; and

14. Interior workplaces not exempted herein.

§ 32.1-73.10. Exceptions; discretion of proprietors.

A. Unless otherwise provided herein, this article shall not apply to:

1. Private homes, private residences, private automobiles, and home-based businesses, unless such private homes, private residences, private vehicles, or home-based businesses are used in conjunction with a licensed child care, adult day care, or health care facility;

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

3. Any hotel or motel room not clearly designated as a "nonsmoking" room that is offered for lease or rent to the public;

4. Specialty tobacco stores;

5. Tobacco manufacturers; and

6. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article.

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

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

A. The proprietor of any building or area in which smoking is not prohibited by this article who allows smoking in any building or area or part thereof shall post and properly maintain signs in an appropriate place on such building or area, in a clear, conspicuous, and prominent manner, stating "Warning: Smoking Permitted."

B. This section shall not be construed as requiring the posting of signs on private homes, private residences, private vehicles, or home-based businesses unless such private homes, private residences,

private vehicles, or home-based businesses are used in conjunction with a licensed child care, adult day care, or health care.

§ 32.1-73.12. Penalties.

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

B. Any proprietor of any establishment, building, or area that is subject to the smoking restrictions provided in this article 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 article.

§ 32.1-73.13. Retaliation prohibited.

No person or employer shall, in any manner, retaliate against any other person, employee, applicant for employment, or customer for filing any complaint or report about or seeking prosecution of any violation of this article.

§ 32.1-73.14. Implementation; education.

A. The Board of Health shall promulgate such regulations as may be necessary and appropriate to implement the provisions of this article.

B. To encourage compliance with this article and to inform the public of the health benefits of avoiding exposure to secondhand smoke, the State Health Commissioner shall develop and implement an education program to explain the medical rationale, environmental purpose, requirements, and benefits of this article to the citizens of the Commonwealth, as well as to business leaders, and administrative and management staff.

§ 32.1-73.15. Construction of article.

This article shall not be construed to permit smoking where it is otherwise prohibited by the proprietor of any establishment, building, or area or by any rule or regulation of a state or local agency or any other applicable law, including any ordinance duly adopted by any local governing body.

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

INTRODUCED