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HOUSE BILL NO. 2422

Offered January 10, 2007

Prefiled January 9, 2007

A BILL to amend and reenact §§ 15.2-2800, 15.2-2801, 15.2-2804, 15.2-2805, 15.2-2806, and 35.1-1 of the Code of Virginia, to amend the Code of Virginia by adding in Title 35.1 a chapter numbered 3.1, consisting of sections numbered 35.1-24.1 through 35.1-24.3, relating to smoking in restaurants; civil penalties.

Patron—Griffith

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2800, 15.2-2801, 15.2-2804, 15.2-2805, 15.2-2806, and 35.1-1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 35.1 a chapter numbered 3.1, consisting of sections numbered 35.1-24.1 through 35.1-24.3 as follows:

§ 15.2-2800. 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 where one can consume alcoholic beverages and hors d'oeuvres, but excluding any such establishment or portion of the establishment having tables or seating facilities where, in consideration of payment, meals are served.

"Educational facility" means any building used for 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 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 medical and surgical center.

"Private work place" means any office or work area that is not open to the public in the normal course of business except by individual invitation.

"Proprietor" means the owner or lessee of the public place, who ultimately controls the activities within the public place. 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 of 15,000 square feet or more, 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 used by the general public and used as a stadium, arena, skating rink, video game facility, or senior citizen recreational facility.

"Restaurant" means any building, structure, or area, excluding a bar or lounge area as defined in this chapter, having a seating capacity of fifty or more patrons, where food is available for eating on the premises, in consideration of payment.

"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.

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

§ 15.2-2801. Statewide regulation of smoking.

A. The Commonwealth or any agency thereof and every locality shall provide reasonable no-smoking areas, considering the nature of the use and the size of the building, in any building owned or leased by the Commonwealth or any agency thereof or a locality. The provisions of this chapter shall not apply to office, work or other areas of the Department of Corrections which are not entered by the general public in the normal course of business or use of the premises.

B. Smoking shall be prohibited in (i) elevators, regardless of capacity, except in any open material

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59 hoist elevator, not intended for use by the public; (ii) public school buses; (iii) the interior of any public
60 elementary, intermediate, and secondary school; (iv) hospital emergency rooms; (v) local or district
61 health departments; (vi) polling rooms; (vii) indoor service lines and cashier lines; (viii) public restrooms
62 in any building owned or leased by the Commonwealth or any agency thereof; (ix) the interior of a
63 child day center licensed pursuant to § 63.2-1701 that is not also used for residential purposes; however,
64 this prohibition shall not apply to any area of a building not utilized by a child day center, unless
65 otherwise prohibited by this chapter; and (x) public restrooms of health care facilities.

66 ~~C. Any restaurant having a seating capacity of fifty or more persons shall have a designated~~
67 ~~no-smoking area sufficient to meet customer demand. In determining the extent of the no-smoking area,~~
68 ~~the following shall not be included as seating capacity: (i) seats in any bar or lounge area of a restaurant~~
69 ~~and (ii) seats in any separate room or section of a restaurant which is used exclusively for private~~
70 ~~functions.~~

71 ~~DC. The proprietor or other person in charge of an educational facility, except any public~~
72 ~~elementary, intermediate, or secondary school, health care facility, or a retail establishment of 15,000~~
73 ~~square feet or more serving the general public, including, but not limited to, department stores, grocery~~
74 ~~stores, drug stores, clothing stores, shoe stores, and recreational facilities shall designate reasonable~~
75 ~~no-smoking areas, considering the nature of the use and the size of the building.~~

76 ~~ED. The proprietor or other person in charge of a space subject to the provisions of this chapter shall~~
77 ~~post signs conspicuous to public view stating "Smoking Permitted" or "No Smoking," and in~~
78 ~~restaurants, signs conspicuous to ordinary public view at or near each public entrance stating~~
79 ~~"No Smoking Section Available." Any person failing to post such signs may be subject to a civil penalty~~
80 ~~of not more than twenty-five dollars.~~

81 ~~FE. No person shall smoke in a designated no-smoking area and any person who continues to smoke~~
82 ~~in such area after having been asked to refrain from smoking may be subject to a civil penalty of not~~
83 ~~more than twenty-five dollars.~~

84 ~~GF. Any law-enforcement officer may issue a summons regarding a violation of this chapter.~~

85 ~~HG. The provisions of this chapter shall not be construed to regulate smoking in retail tobacco~~
86 ~~stores, tobacco warehouses or tobacco manufacturing facilities.~~

87 § 15.2-2804. Mandatory provisions of ordinances.

88 Any ordinance shall provide that it is unlawful for any person to smoke in any of the following
89 places:

- 90 1. Elevators, regardless of capacity;
- 91 2. The interior of any public elementary, intermediate, and secondary school;
- 92 3. Common areas in an educational facility, including, but not limited to, classrooms, hallways,
93 auditoriums, and public meeting rooms;
- 94 4. Any part of an ~~restaurant~~*educational facility, health care facility, recreational facility, or retail*
95 *establishment* designated a "no-smoking" area pursuant to the provisions of this chapter;
- 96 5. Indoor service lines and cashier areas; and
- 97 6. School buses and public conveyances.

98 § 15.2-2805. Optional provisions of ordinances.

99 Any ordinance may provide that management shall designate reasonable no-smoking areas,
100 considering the nature of the use and the size of the building, in the following places:

- 101 1. Retail and service establishments of 15,000 square feet or more serving the general public,
102 including, but not limited to, department stores, grocery stores, drug stores, clothing stores, and shoe
103 stores;
- 104 2. Rooms in which a public meeting or hearing is being held;
- 105 3. Places of entertainment and cultural facilities, including, but not limited to, theaters, concert halls,
106 gymnasiums, auditoriums, other enclosed arenas, art galleries, libraries, and museums;
- 107 4. Indoor facilities used for recreational purposes; *and*
- 108 5. Other public places; ~~and~~.

109 ~~6. Any restaurant having a seating capacity of fifty or more persons shall have a designated~~
110 ~~no-smoking area sufficient to meet customer demand. In determining the extent of the no-smoking area,~~
111 ~~the following shall not be included as seating capacity: (i) seats in any bar or lounge area of a restaurant~~
112 ~~and (ii) seats in any separate room or section of a restaurant which is used exclusively for private~~
113 ~~functions.~~

114 § 15.2-2806. Exceptions.

115 The provisions of §§ 15.2-2803 through 15.2-2805 shall not be construed to allow ordinances to
116 regulate smoking in:

- 117 1. ~~Bars and lounge areas;~~
- 118 21. Retail tobacco stores;
- 119 32. ~~Restaurants, conference~~*Conference* or meeting rooms; and public and private assembly rooms
120 while these places are being used for private functions;

43. Office or work areas which are not entered by the general public in the normal course of business or use of the premises;

54. Areas of enclosed shopping centers or malls that are external to the retail stores therein, are used by customers as a route of travel from one store to another, and consist primarily of walkways and seating arrangements; and

65. Lobby areas of hotels, motels, and other establishments open to the public for overnight accommodation.

§ 35.1-1. Definitions.

As used in this title unless the context requires otherwise or it is otherwise provided:

1. "Board" or "State Board" means the State Board of Health.

2. "Campground" means and includes but is not limited to a travel trailer camp, recreation camp, family campground, camping resort, camping community, or any other area, place, parcel, or tract of land, by whatever name called, on which three or more campsites are occupied or intended for occupancy, or facilities are established or maintained, wholly or in part, for the accommodation of camping units for periods of overnight or longer, whether the use of the campsites and facilities is granted gratuitously, or by rental fee, lease, or conditional sale, or by covenants, restrictions, and easements. "Campground" does not include a summer camp, migrant labor camp, or park for mobile homes as defined in this section and in §§ 32.1-203 and 36-71, or a construction camp, storage area for unoccupied camping units, or property upon which the individual owner may choose to camp and not be prohibited or encumbered by covenants, restrictions, and conditions from providing his sanitary facilities within his property lines.

3. "Camping unit" means and includes a tent, tent trailer, travel trailer, camping trailer, pickup camper, motor home, and any other device or vehicular type structure for use as temporary living quarters or shelter during periods of recreation, vacation, leisure time, or travel.

4. "Campsite" means and includes any plot of ground within a campground used or intended for occupation by the camping unit.

5. "Commissioner" means the State Health Commissioner.

6. "Department" means the State Department of Health.

7. "Hotel" means any place offering to the public for compensation transitory lodging or sleeping accommodations, overnight or otherwise, including but not limited to facilities known by varying nomenclatures or designations as hotels, motels, travel lodges, tourist homes, or hostels.

8. "Person" means an individual, corporation, partnership, association, or any other legal entity.

9. "Restaurant" means any one of the following:

a. Any place where food is prepared for service to the public on or off the premises, or any place where food is served. Examples of such places include but are not limited to lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs, kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and colleges, and kitchen areas of local correctional facilities subject to standards adopted under § 53.1-68. Excluded from the definition are places manufacturing packaged or canned foods which are distributed to grocery stores or other similar food retailers for sale to the public.

b. Any place or operation which prepares or stores food for distribution to persons of the same business operation or of a related business operation for service to the public. Examples of such places or operations include but are not limited to operations preparing or storing food for catering services, push cart operations, hotdog stands, and other mobile points of service. Such mobile points of service are also deemed to be restaurants unless the point of service and of consumption is in a private residence.

10. "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.

11. "Summer camp" means and includes any building, tent, or vehicle, or group of buildings, tents, or vehicles, if operated as one place or establishment, or any other place or establishment, public or private, together with the land and waters adjacent thereto, which is operated or used in this Commonwealth for the entertainment, education, recreation, religious instruction or activities, physical education, or health of persons under eighteen years of age who are not related to the operator of such place or establishment by blood or marriage within the third degree of consanguinity or affinity, if twelve or more such persons at any one time are accommodated, gratuitously or for compensation, overnight and during any portion of more than two consecutive days.

CHAPTER 3.1.

SMOKING IN RESTAURANTS

§ 35.1-24.1. Smoking prohibited.

In order to reduce the exposure to environmental tobacco smoke, smoking shall not be permitted and

182 *no person shall smoke in any restaurant in the Commonwealth.*

183 *§ 35.1-24.2. Exceptions.*

184 *A. Any restaurant may allow smoking if signs stating "Smoking Permitted" conspicuous to ordinary*
185 *public view are placed at each public entrance.*

186 *B. The provisions of this chapter shall not apply to restaurants as defined in subsection 9(b) of*
187 *§ 35.1-1.*

188 *§ 35.1-24.3. Penalties.*

189 *A. No person shall smoke in any area in which smoking is prohibited pursuant to this chapter. Any*
190 *person who continues to smoke in such area after having been asked to refrain from smoking shall be*
191 *subject to a civil penalty of not more than \$250. Any person who commits a second offense shall be*
192 *subject to a civil penalty of not more than \$500. Any subsequent offense shall be punishable as a Class*
193 *2 misdemeanor.*

194 *B. Any proprietor of any restaurant who fails to comply with the restrictions provided in this chapter*
195 *shall be subject to a civil penalty of not more than \$500 for the first offense and \$1000 for a second*
196 *offense. Any subsequent offense shall be punishable as a Class 1 misdemeanor.*

197 *C. Any law-enforcement officer may issue a summons regarding a violation of this article.*