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SENATE BILL NO. 1161
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by Senator Williams
 on January 31, 2007)

(Patron Prior to Substitute—Senator Bell)

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 32.1-73.11, and to repeal Chapter 28 (§§ 15.2-2800 through 15.2-2810) of Title 15.2 of the Code of Virginia, relating to smoking in public places; penalties.*

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 32.1-73.11, as follows:

Article 15.

Smoking in Public Places.

§ 32.1-73.8. Definitions.

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

"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 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.

"Private workplace" 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 article, having a seating capacity of 50 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.

"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, which is primarily used or designed for the purpose of exhibiting any motion picture, stage production, musical recital, dance, lecture, or other similar performance.

§ 32.1-73.9. Smoking prohibited.

In order to reduce the exposure to environmental tobacco smoke, smoking shall not be permitted and no person shall smoke in any public place in the Commonwealth.

§ 32.1-73.10. Exceptions.

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

60 *with a licensed child care, adult day care, or health care facility;*
61 *2. Any indoor area where private functions are being held when the arrangements for the private*
62 *functions are under the control of the sponsor of the function;*
63 *3. Any hotel or motel room not clearly designated as a "nonsmoking" room that is offered for lease*
64 *or rent to the public;*
65 *4. Specialty tobacco stores;*
66 *5. Tobacco manufacturers; and*
67 *6. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by*
68 *one or more persons, all of whom are smokers and have requested in writing to be placed in a room*
69 *where smoking is permitted, provided that smoke from these places does not infiltrate into areas where*
70 *smoking is prohibited under the provisions of this article.*
71 *B. Any restaurant may allow smoking if signs stating "Smoking Permitted" conspicuous to ordinary*
72 *public view are placed at each public entrance. The provisions of this article shall not apply to*
73 *restaurants as defined in subsection 9(b) of § 35.1-1.*
74 *§ 32.1-73.11. Penalties.*
75 *A. No person shall smoke in any area in which smoking is prohibited pursuant to this article. Any*
76 *person who continues to smoke in such area after having been asked to refrain from smoking shall be*
77 *subject to a civil penalty of not more than \$250. Any person who commits a second offense shall be*
78 *subject to a civil penalty of not more than \$500. Any subsequent offense shall be punishable as a Class*
79 *2 misdemeanor.*
80 *B. Any proprietor of any restaurant who fails to comply with the restrictions provided in this article*
81 *shall be subject to a civil penalty of not more than \$500 for the first offense and \$1000 for a second*
82 *offense. Any subsequent offense shall be punishable as a Class 1 misdemeanor.*
83 *C. Any law-enforcement officer may issue a summons regarding a violation of this article.*
84 **2. That Chapter 28 (§§ 15.2-2800 through 15.2-2810) of Title 15.2 of the Code of Virginia is**
85 **repealed.**