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SENATE BILL NO. 501

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend and reenact § 18.2-511.1 of the Code of Virginia, to amend the Code of Virginia by adding in Title 32.1 a chapter numbered 16, consisting of articles numbered 1 through 3, containing sections numbered 32.1-370 through 32.1-383, and to repeal Chapter 28 (§ 15.2-2800 et seq.) of Title 15.2 of the Code of Virginia, relating to the Virginia Indoor Clean Air Act; penalty.

Patrons—Locke and Northam

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-511.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 32.1 a chapter numbered 16, consisting of articles numbered 1 through 3, containing sections numbered 32.1-370 through 32.1-383 as follows:

§ 18.2-511.1. Smoking in proximity to a medical oxygen source in a health care facility; penalty.

Any person who smokes or uses an open flame within 25 feet of a medical oxygen source in a health care facility, as defined in § ~~15.2-2800~~ 32.1-370, when the area is posted as an area where smoking and open flame are prohibited is guilty of a Class 2 misdemeanor.

CHAPTER 16.

VIRGINIA INDOOR CLEAN AIR ACT.

Article 1.

General Provisions.

§ 32.1-370. 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.

"Food establishment" means any one of the following:

1. 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 restaurants, 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. "Food establishment" shall not include places manufacturing packaged or canned foods that are distributed to grocery stores or other similar food retailers for sale to the public; or

2. Any place or operation that 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 the preparation or storage of food for catering services, pushcart operations, hotdog stands, and other mobile points of service. "Food establishment" shall not include mobile points of service to the general public that are outdoors or mobile points of service where such service and consumption occur in a private residence or in any location that is not a public place.

"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,

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SB501

59 public conveyance or public vehicle, restaurant, educational facility, hospital, nursing facility or nursing
60 home, other health care facility, library, retail store of 15,000 square feet or more, auditorium, arena,
61 theater, museum, concert hall, or other area used for a performance or an exhibit of the arts or
62 sciences, or any meeting room.

63 "Recreational facility" means any enclosed, indoor area used by the general public and used as a
64 stadium, arena, skating rink, video game facility, or senior citizen recreational facility.

65 "Restaurant" means any building, structure, or area, excluding a bar or lounge area, having seating
66 capacity for patrons where food is available for eating on the premises, in consideration of payment.

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

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

73 § 32.1-371. Applicability.

74 Nothing in this chapter shall be construed to

75 1. Permit smoking where it is otherwise prohibited or restricted by other applicable provisions of
76 law; or

77 2. Regulate smoking in retail tobacco stores, tobacco warehouses or tobacco manufacturing facilities.

78 § 32.1-372. Authority of law-enforcement officials.

79 Any law-enforcement officer may issue a summons regarding a violation of this chapter.

80 § 32.1-373. Smoking in public buildings or facilities; exception.

81 A. The Commonwealth or any agency thereof and every locality shall provide reasonable no-smoking
82 areas, considering the nature of the use and the size of the building, in any building owned or leased by
83 the Commonwealth or any agency thereof or a locality.

84 B. The provisions of this chapter shall not apply to office, work or other areas of the Department of
85 Corrections that are not entered by the general public in the normal course of business or use of the
86 premises.

87 Article 2.

88 Statewide Regulation of Smoking.

89 § 32.1-374. Prohibitions on smoking generally; penalty for violation.

90 A. Smoking shall be prohibited in (i) elevators, regardless of capacity, except in any open material
91 hoist elevator not intended for use by the general public; (ii) public school buses; (iii) the interior of
92 any public elementary, intermediate, and secondary school; (iv) hospital emergency rooms; (v) local or
93 district health departments; (vi) polling rooms; (vii) indoor service lines and cashier lines; (viii) public
94 restrooms in any building owned or leased by the Commonwealth or any agency thereof; (ix) the
95 interior of a child day center licensed pursuant to § 63.2-1701 that is not also used for residential
96 purposes; however, this prohibition shall not apply to any area of a building not utilized by a child day
97 center, unless otherwise prohibited by this chapter; and (x) public restrooms of health care facilities.

98 B. No person shall smoke in a designated no-smoking area and any person who continues to smoke
99 in such area after having been asked to refrain from smoking may be subject to a civil penalty of not
100 more than \$25.

101 C. Civil penalties assessed under this section shall be paid into the Virginia Health Care Fund
102 established under § 32.1-366.

103 § 32.1-375. Smoking in food establishments prohibited; exceptions; penalty for violation.

104 A. In order to reduce the exposure to environmental tobacco smoke, smoking shall not be permitted
105 and no person shall smoke in any (i) food establishment in the Commonwealth or (ii) bar or lounge
106 area, including outdoor areas of such bar or lounge area that are enclosed by screened walls, roll-up
107 doors or windows, or other seasonal or temporary enclosures, regardless of whether the roll-up doors,
108 windows, or other seasonal or temporary enclosures are open or closed.

109 B. Nothing in this section shall be construed to prohibit smoking in any (i) outdoor areas of food
110 establishments or (ii) bar or lounge areas, provided such areas are not enclosed by screened walls,
111 roll-up doors, windows, or other seasonal or temporary enclosures.

112 C. No person shall smoke in any area in which smoking is prohibited pursuant to this section. Any
113 person who continues to smoke in such area after having been asked to refrain from smoking shall be
114 subject to a civil penalty of not more than \$250. Any person who commits a second offense shall be
115 subject to a civil penalty of not more than \$500. Any subsequent offense shall be punishable as a Class
116 2 misdemeanor.

117 D. Any proprietor of any food establishment who fails to comply with the restrictions provided in this
118 section shall be subject to a civil penalty of not more than \$500 for the first offense and \$1,000 for a
119 second offense. Any subsequent offense shall be punishable as a Class 1 misdemeanor.

120 E. Civil penalties assessed under this section shall be paid into the Virginia Health Care Fund

established under § 32.1-366.

§ 32.1-376. Designation of "No-Smoking" areas; smoking prohibited in "No-Smoking" areas; penalty for violation.

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

B. The proprietor or other person in charge of a space subject to the provisions of this section shall post signs conspicuous to public view stating "Smoking Permitted" or "No Smoking." Any person failing to post such signs may be subject to a civil penalty of not more than \$25.

C. No person shall smoke in a designated no-smoking area and any person who continues to smoke in such area after having been asked to refrain from smoking may be subject to a civil penalty of not more than \$25.

D. Civil penalties assessed under this section shall be paid into the Virginia Health Care Fund established under § 32.1-366.

§ 32.1-377. Responsibility of building proprietors and managers.

The proprietors or persons who manage or otherwise control any building, structure, space, place, or area governed by this chapter in which smoking is not otherwise prohibited may designate rooms or areas in which smoking is permitted as follows:

1. Designated smoking areas shall not encompass so much of the building, structure, space, place, or area open to the general public that reasonable no-smoking areas, considering the nature of the use and the size of the building, are not provided;

2. Designated smoking areas shall be separate to the extent reasonably practicable from those rooms or areas entered by the general public in the normal use of the particular business or institution; and

3. In designated smoking areas, ventilation systems and existing physical barriers shall be used when reasonably practicable to minimize the permeation of smoke into no-smoking areas. However, this chapter shall not be construed as requiring physical modifications or alterations to any structure.

Article 3.

Local Regulation of Smoking.

§ 32.1-378. Ordinances regulating smoking.

A. No ordinances enacted by a locality prior to January 1, 1990, shall be deemed invalid or unenforceable because of lack of consistency with the provisions of this chapter.

B. Unless specifically permitted in this chapter, ordinances adopted after January 1, 1990, shall not contain provisions or standards that exceed those established in this chapter.

C. However, any ordinance may provide that employers may regulate smoking in the private work place as they deem appropriate under the following circumstances: (i) if the designation of smoking and no-smoking areas is the subject of a written agreement between the employer and his employees, the provisions of the written agreement shall control such designation and (ii) a total ban on smoking in any work place shall only be enforced by the employer upon an affirmative vote of a majority of the affected employees voting, unless such ban is the subject of a contract of employment between the employer and the employees as a prior condition of employment. No ordinance adopted pursuant to this subsection shall affect no-smoking policies established by employers prior to the adoption of such ordinance.

§ 32.1-379. Mandatory provisions of ordinances.

Any ordinance enacted by a locality shall provide that it is unlawful for any person to smoke in any of the places governed by § 32.1-374.

§ 32.1-380. Optional provisions of ordinances.

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

1. Retail and service establishments of 15,000 square feet or more serving the general public, including, but not limited to, department stores, grocery stores, drug stores, clothing stores, and shoe stores;

2. Rooms in which a public meeting or hearing is being held;

3. Places of entertainment and cultural facilities, including, but not limited to, theaters, concert halls, gymnasiums, auditoriums, other enclosed arenas, art galleries, libraries, and museums;

4. Indoor facilities used for recreational purposes; or

5. Other public places.

§ 32.1-381. Other ordinances not authorized.

The provisions of §§ 32.1-378 through 32.1-380 shall not be construed to authorize any locality to enact an ordinance regulating smoking in:

182 1. Bars and lounge areas, except as provided in subsection B of § 32.1-375;
183 2. Conference or meeting rooms, and public and private assembly rooms while such rooms are being
184 used for private functions;
185 3. Private workplace;
186 4. Areas of enclosed shopping centers or malls that are external to the retail stores therein, are used
187 by customers as a route of travel from one store to another, and consist primarily of walkways and
188 seating arrangements; and
189 5. Lobby areas of hotels, motels, and other establishments open to the general public for overnight
190 accommodation.
191 § 32.1-382. Regulation of smoking; posting of signs.
192 Any person who owns, manages, or otherwise controls any building or area in which smoking is
193 regulated by an ordinance shall post in an appropriate place, in a clear, conspicuous, and sufficient
194 manner, "Smoking Permitted" signs, "No Smoking" signs, or "No-Smoking Section Available" signs.
195 § 32.1-383. Enforcement of ordinances.
196 A. Any ordinance may provide a civil penalty of not more than \$25 for violations of any provision of
197 such ordinance.
198 B. Any ordinance may provide that no person shall smoke in a designated no-smoking area and any
199 person who continues to smoke in such area after being asked to refrain from smoking may be subject
200 to a civil penalty of not more than \$25.
201 C. Any ordinance shall provide that any law-enforcement officer may issue a summons regarding a
202 violation of the ordinance.
203 D. Any civil penalties assessed under this section shall be paid into the treasury of the locality where
204 the offense occurred.
205 **2. That Chapter 28 (§ 15.2-2800 et seq.) of Title 15.2 of the Code of Virginia is repealed.**