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HOUSE BILL NO. 1703

Offered January 14, 2009

Prefiled January 5, 2009

A BILL to amend and reenact §§ 15.2-2801 and 15.2-2803 through 15.2-2807 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2801.1, relating to the Virginia Indoor Clean Air Act; penalty.

Patrons—Cosgrove, Hamilton, Bouchard, Brink, Bulova, Ebbin, Eisenberg, Englin, Herring, Howell, A.T., Marsden, Mathieson, Shannon, Tata and Vanderhye

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2801 and 15.2-2803 through 15.2-2807 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2801.1 as follows:

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

C. ~~Any~~*Except as provided in § 15.2-2801.1, any* restaurant having a seating capacity of fifty or more persons shall have a designated no-smoking area sufficient to meet customer demand. In determining the extent of the no-smoking area, ~~the following~~ *seats in any separate room or section of a restaurant that is used exclusively for private functions* shall not be included as seating capacity~~: (i) seats in any bar or lounge area of a restaurant and (ii) seats in any separate room or section of a restaurant which is used exclusively for private functions~~.

D. The proprietor or other person in charge of an educational facility, except any public elementary, intermediate, or secondary school, health care facility, or 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.

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

F. 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 twenty-five dollars.

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

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

§ 15.2-2801.1. Smoking prohibited in certain restaurants; restaurant employees.

A. It shall be unlawful for any person to smoke in any establishment built and operated after July 1, 2010, as a restaurant, unless such establishment is constructed in such a manner that areas where smoking may be permitted are structurally separated from the portion of the restaurant in which smoking is prohibited and such areas contain structurally separated ventilation systems.

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B. No wait staff or bus staff in restaurants subject to this section shall be required by the proprietors or person who manages or otherwise controls any such restaurant to work in smoking areas mandated by this section without the consent of such employees.

§ 15.2-2803. 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 which exceed those established in this chapter.

§ 15.2-2804. Mandatory provisions of ordinances.

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

1. Elevators, regardless of capacity;

2. The interior of any public elementary, intermediate, and secondary school;

3. Common areas in an educational facility, including, but not limited to, classrooms, hallways, auditoriums, and public meeting rooms;

4. ~~Any part of a restaurant designated a "no-smoking" area pursuant to the provisions of this chapter~~ *Bars and lounge areas of a restaurant*;

5. Indoor service lines and cashier areas; and

6. School buses and public conveyances.

§ 15.2-2805. 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 *located in a private work place* 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;

5. Other public places; and

6. ~~Any~~*Except as provided in § 15.2-2801.1, any* restaurant having a seating capacity of fifty or more persons shall have a designated no-smoking area sufficient to meet customer demand. In determining the extent of the no-smoking area, ~~the following~~ *seats in any separate room or section of a restaurant that is used exclusively for private functions* shall not be included as seating capacity~~: (i) seats in any bar or lounge area of a restaurant and (ii) seats in any separate room or section of a restaurant which is used exclusively for private functions~~.

§ 15.2-2806. Exceptions.

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

1. ~~Bars and lounge areas;~~

~~2.~~ Retail tobacco stores;

~~3.~~*2.* Restaurants, conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions;

~~4.~~*3.* Office or work areas *located in a private work place,* which are not entered by the general public in the normal course of business or use of the premises;

~~5.~~*4.* 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

~~6.~~*5.* Lobby areas of hotels, motels, and other establishments open to the public for overnight accommodation.

§ 15.2-2807. Chapter's application to private work places.

~~Ordinances adopted after January 1, 1990, shall not contain provisions or standards which exceed those established in this chapter.~~ ~~However~~*Except as provided in § 15.2-2801.1,* 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 such ordinance shall affect no-smoking policies established by employers prior to the adoption of such ordinance.