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**HOUSE BILL NO. 1704**

Offered January 14, 2009

Prefiled January 5, 2009

*A BILL to amend and reenact § 18.2-511.1 of the Code of Virginia, 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 32.1-73.17, 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 Smoke Free 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 § 18.2-511.1 of the Code of Virginia is amended and reenacted, and 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 32.1-73.17 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~~ 32.1-73.8, when the area is posted as an area where smoking and open flame are prohibited is guilty of a Class 2 misdemeanor.

*Article 15.**Virginia Smoke Free Air Act.**§ 32.1-73.8. Definitions.*

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

*"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.*

*"Health care 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 health care 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 club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws, a constitution, or both to govern its activities.*

*"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, health care 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 that is attended by persons other than members or invited guests; however, a private residence is not a "public place" unless being used as a child care, adult day care, or health care facility.*

*"Recreational facility" means any enclosed, indoor area open to the general public for any*

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59 recreational purpose, including, but not limited to, any indoor area used as a bowling alley, dance hall,  
60 gaming facility, poolroom, stadium, arena, skating rink, video game facility, or senior citizen  
61 recreational facility.

62 "Restaurant" means any enclosed eating establishment, including, but not limited to, fast food  
63 enterprises, coffee shops, cafeterias, and other entities licensed as such by the Board of Health,  
64 including a bar or lounge area within a restaurant.

65 "Secondhand smoke" means exhaled smoke and smoke emanating from any burning tobacco product  
66 or any other product while being smoked.

67 "Smoke" or "smoking" means the inhaling, exhaling, burning, or carrying or holding of any lighted  
68 cigar, cigarette, pipe, or any tobacco or other product in any manner or form.

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

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

74 "Workplace" means an area under the control of a public or private employer that employees  
75 normally frequent during the course of employment, including, but not limited to, work areas, private  
76 offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias,  
77 hallways, and vehicles. A private residence is not a "workplace" unless it is used as a child care, adult  
78 day care, or health care facility.

79 § 32.1-73.9. Smoking restrictions in public places.

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

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

85 2. Common areas and at least 80 percent of all rooms rented to guests in hotels and motels  
86 regulated by the Board of Health pursuant to Title 35.1. For the purposes of this article, common areas  
87 shall include, but not be limited to, exercise rooms, hallways, lobbies, meeting rooms, laundry rooms,  
88 and enclosed swimming and other recreational facilities;

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

92 4. Educational facilities;

93 5. Elevators;

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

95 7. Health care facilities;

96 8. Public conveyances;

97 9. Public places;

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

100 11. Recreational facilities;

101 12. Restaurants;

102 13. Theaters; and

103 14. Interior workplaces not exempted herein.

104 § 32.1-73.10. Exceptions; discretion of proprietors.

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

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

109 2. Private clubs, except when being used for a function that is attended by persons other than  
110 members or invited guests, provided that smoke from such clubs does not infiltrate into areas where  
111 smoking is prohibited under the provisions of this article. This exemption shall not apply to any  
112 organization that is established for the purpose of avoiding compliance with this article;

113 3. Hotel and motel rooms that are rented to guests and are designated as smoking rooms, provided,  
114 however, that not more than 20 percent of rooms rented to guests in a hotel or motel may be so  
115 designated. All smoking rooms on the same floor shall be contiguous so that smoke from these rooms  
116 shall not infiltrate into areas where smoking is prohibited under the provisions of this article. The status  
117 of rooms as smoking or nonsmoking shall not be changed, except to add additional nonsmoking rooms;

118 4. Specialty tobacco stores;

119 5. Tobacco manufacturers; and

120 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 not permitted.

A. "No Smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a bar across it, shall be clearly and conspicuously posted in every public place and workplace where smoking is prohibited by this article, by the owner, operator, manager, or other person in control of that place.

1. Every public place and workplace where smoking is prohibited by this article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited. Every vehicle that constitutes a workplace under this article shall have at least one conspicuous sign, visible from the exterior of the vehicle, clearly stating that smoking is prohibited.

2. All ashtrays shall be removed from any area where smoking is prohibited by this article by the owner, operator, manager, or other person having control of the area.

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. The Commissioner of Health or his designee shall enforce the provisions 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.

§ 32.1-73.16. Severability.

If any provision, clause, sentence, or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, the invalidity shall not affect the other provisions or applications that can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

§ 32.1-73.17. Local control.

Nothing in this article shall be construed to restrict local control or otherwise prohibit a county, city, or town from adopting and enforcing local tobacco control measures that meet or exceed the minimum applicable standards of this article.

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