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HOUSE BILL NO. 2483

Offered January 14, 2009

A BILL to amend and reenact §§ 15.2-2800, 15.2-2801, 15.2-2804, 15.2-2805, and 15.2-2806 of the Code of Virginia and to amend the Code of Virginia by adding in Title 32.1 a chapter numbered 16, consisting of sections numbered 32.1-370 through 32.1-376, relating to smoking in restaurants where minors are present; civil penalties.

Patrons—Eisenberg, Bouchard, Brink, Bulova, Englin, Howell, A.T., Marsden, Morrissey and Plum

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, and 15.2-2806 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 32.1 a chapter numbered 16, consisting of sections numbered 32.1-370 through 32.1-376 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 hoist elevator, not intended for use by the public; (ii) public school buses; (iii) the interior of any public

INTRODUCED

HB2483

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

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

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

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

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

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

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

86 § 15.2-2804. Mandatory provisions of ordinances.

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

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

97 § 15.2-2805. Optional provisions of ordinances.

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

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

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

113 § 15.2-2806. Exceptions.

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

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

CHAPTER 16.

MINORS IN RESTAURANTS.

§ 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 devoted to the sale and service of alcoholic beverages for consumption on the premises, and where the sale or service of food is only incidental to the consumption of such beverages.

"Minor" means person of less than 18 years of age.

"Proprietor" means the owner, lessee, or person who ultimately controls the activities within the restaurant, bar, or lounge area. The term "proprietor" includes corporations, associations, or partnerships as well as individuals.

"Restaurant" means any place where food is given, served, or available for sale to the public for consumption on the premises. Types of restaurants include, but are not limited to, lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, and delicatessens. Excluded from the definition are places manufacturing packaged or canned foods that are distributed to grocery stores or other similar food retailers for sale to the public, push cart operations, hotdog stands, other mobile points of service, and private residences. The term "restaurant" may include a bar or lounge area that is located within a restaurant.

"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.

§ 32.1-371. Presence of minors in smoking restaurants.

A. In order to reduce the exposure of minors to environmental tobacco smoke, minors shall not be permitted in any indoor restaurant, bar, or lounge area in the Commonwealth that allows smoking.

B. Nothing in this section shall be construed to prohibit the presence of minors in any outdoor area of a restaurant, bar, or lounge area that allows smoking, provided such area is not enclosed by screened walls, roll-up doors, windows, or other seasonal or temporary enclosures, regardless or whether the roll-up doors, windows, or other seasonal or temporary enclosures are open or closed.

§ 32.1-372. Posting of signs.

The proprietor of any restaurant, bar, or lounge area that allows smoking shall post signs stating "No Minors Allowed," or language substantially similar, clearly and conspicuously in every indoor restaurant, bar, or lounge area where smoking is allowed.

§ 32.1-373. Penalties.

A. Any proprietor of any indoor restaurant, bar, or lounge area who fails to comply with the requirements of this chapter shall be subject to a civil penalty of not more than \$100 for a first offense, and \$250 for any subsequent offense.

B. It shall be an affirmative defense to a complaint brought against a proprietor for a violation of a provision of this chapter that a proprietor or an employee of such proprietor:

1. Posted a "No Minors Allowed" sign as required by § 32.1-372;

2. Refused to seat or serve any minor attempting to enter a prohibited area; and

3. If the minor remained in the prohibited area, asked the minor to leave the establishment.

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

§ 32.1-374. Authority of law-enforcement officials.

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

§ 32.1-375. Retaliation prohibited.

No person, employer, or proprietor 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 chapter.

§ 32.1-376. Severability.

If any provision, clause, sentence, or paragraph of this chapter 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 of application, and to this end the provisions of this chapter shall be severable.