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SENATE BILL NO. 1002

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact §§ 15.2-2800, 15.2-2805, 15.2-2806, and 15.2-2807 of the Code of Virginia, relating to smoking in restaurants.

Patron—Quayle

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2800, 15.2-2805, 15.2-2806, and 15.2-2807 of the Code of Virginia are amended and reenacted 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 enclosed eating establishment, including, but not limited to, fast food enterprises, coffee shops, cafeterias, and other entities licensed as such by the Board of Health, including bar or lounge areas as defined in this chapter.

"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.

§ 15.2-2805. 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 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,

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SB1002

59 gymnasiums, auditoriums, other enclosed arenas, art galleries, libraries, and museums;
60 4. Indoor facilities used for recreational purposes; *and*
61 5. Other public places; *and*.
62 6. Any restaurant having a seating capacity of fifty or more persons shall have a designated
63 no-smoking area sufficient to meet customer demand. In determining the extent of the no-smoking area,
64 the following shall not be included as seating capacity: (i) seats in any bar or lounge area of a restaurant
65 and (ii) seats in any separate room or section of a restaurant which is used exclusively for private
66 functions.
67 § 15.2-2806. Exceptions.
68 The provisions of §§ 15.2-2803 through 15.2-2805 shall not be construed to allow ordinances to
69 regulate smoking in:
70 1. Bars and lounge areas;
71 21. Retail tobacco stores;
72 32. Restaurants, conference or meeting rooms; and public and private assembly rooms
73 while these places are being used for private functions;
74 43. Office or work areas which are not entered by the general public in the normal course of
75 business or use of the premises;
76 54. Areas of enclosed shopping centers or malls that are external to the retail stores therein, are used
77 by customers as a route of travel from one store to another, and consist primarily of walkways and
78 seating arrangements; and
79 65. Lobby areas of hotels, motels, and other establishments open to the public for overnight
80 accommodation.
81 § 15.2-2807. Chapter's application to certain ordinances.
82 A. *Unless specifically permitted by this chapter, Ordinances* ordinances adopted after January 1, 1990,
83 shall not contain provisions or standards which exceed those established in this chapter. However, any
84 ordinance may provide that employers may regulate smoking in the private work place as they deem
85 appropriate under the following circumstances: (i) if the designation of smoking and no-smoking areas is
86 the subject of a written agreement between the employer and his employees, the provisions of the
87 written agreement shall control such designation and (ii) a total ban on smoking in any work place shall
88 only be enforced by the employer upon an affirmative vote of a majority of the affected employees
89 voting, unless such ban is the subject of a contract of employment between the employer and the
90 employees as a prior condition of employment. No such ordinance shall affect no-smoking policies
91 established by employers prior to the adoption of such ordinance.
92 B. *Any ordinance may contain provisions or standards related to smoking in restaurants that exceed*
93 *those established in this chapter.*
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