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SENATE BILL NO. 1105

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Education and Health
 on January 29, 2009)

(Patrons Prior to Substitute—Senators Northam and Saslaw [SB 1160])

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 32.1-377, relating to smoking in restaurants; civil penalties.

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 32.1-377, 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 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

60 in any building owned or leased by the Commonwealth or any agency thereof; (ix) the interior of a
61 child day center licensed pursuant to § 63.2-1701 that is not also used for residential purposes; however,
62 this prohibition shall not apply to any area of a building not utilized by a child day center, unless
63 otherwise prohibited by this chapter; and (x) public restrooms of health care facilities.

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

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

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

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

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

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

85 § 15.2-2804. Mandatory provisions of ordinances.

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

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

96 § 15.2-2805. Optional provisions of ordinances.

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

- 99 1. Retail and service establishments of 15,000 square feet or more serving the general public,
100 including, but not limited to, department stores, grocery stores, drug stores, clothing stores, and shoe
101 stores;
- 102 2. Rooms in which a public meeting or hearing is being held;
- 103 3. Places of entertainment and cultural facilities, including, but not limited to, theaters, concert halls,
104 gymnasiums, auditoriums, other enclosed arenas, art galleries, libraries, and museums;
- 105 4. Indoor facilities used for recreational purposes; *and*
- 106 5. Other public places; *and*.
- 107 6. Any restaurant having a seating capacity of fifty or more persons shall have a designated
108 no-smoking area sufficient to meet customer demand. In determining the extent of the no-smoking area,
109 the following shall not be included as seating capacity: (i) seats in any bar or lounge area of a restaurant
110 and (ii) seats in any separate room or section of a restaurant which is used exclusively for private
111 functions.

112 § 15.2-2806. Exceptions.

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

- 115 1. ~~Bars and lounge areas;~~
- 116 2. ~~Retail tobacco stores;~~
- 117 3. ~~Restaurants,~~ *conference* ~~Conference~~ or meeting rooms; and public and private assembly rooms
118 while these places are being used for private functions;
- 119 4. Office or work areas which are not entered by the general public in the normal course of
120 business or use of the premises;
- 121 5. 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.

SMOKING 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.

"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. Applicability.

Nothing in this chapter shall be construed to permit smoking where it is otherwise prohibited or restricted by other applicable provisions of law.

§ 32.1-372. Prohibitions on smoking generally; exception.

A. In order to reduce the exposure to environmental tobacco smoke, smoking shall not be permitted and no person shall smoke in any restaurant, bar or lounge area in the Commonwealth.

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

§ 32.1-373. Posting of signs; removal of ashtrays.

The proprietor of any restaurant, bar or lounge area shall:

1. Post signs stating "No Smoking" or containing the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a bar across it, clearly and conspicuously in every restaurant, bar or lounge area where smoking is prohibited by this chapter; and

2. Remove all ashtrays and other smoking paraphernalia from any area where smoking is prohibited by this chapter.

§ 32.1-374. Penalties.

A. No person shall smoke in any area in which smoking is prohibited pursuant to this chapter. 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 \$25.

B. Any proprietor of any 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 \$25.

C. 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 Smoking" sign as required by § 32.1-373;

2. Removed all ashtrays and other smoking paraphernalia from all areas where smoking is prohibited;

3. Refused to seat or serve any individual who was smoking in a prohibited area; and

4. If the individual continued to smoke after an initial warning, asked the individual to leave the establishment.

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

§ 32.1-375. Authority of law-enforcement officials.

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

§ 32.1-376. Retaliation prohibited.

183 *No person, employer or proprietor shall, in any manner, retaliate against any other person,*
184 *employee, applicant for employment, or customer for filing any complaint or report about or seeking*
185 *prosecution of any violation of this chapter.*

186 *§ 32.1-377. Severability.*

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