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HOUSE BILL NO. 164

Offered January 11, 2012

Prefiled January 6, 2012

A BILL to amend and reenact §§ 15.2-2820, 15.2-2824, 15.2-2826, 15.2-2829, and 15.2-2830 of the Code of Virginia and to repeal § 15.2-2823 of the Code of Virginia, relating to the Virginia Indoor Clean Air Act; smoking in public buildings prohibited; penalty.

 Patron—Hope

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2820, 15.2-2824, 15.2-2826, 15.2-2829, and 15.2-2830 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2820. 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 or meals is incidental to the consumption of the alcoholic beverages.

"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 club" means an organization, whether incorporated or not, that (i) is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes, including club or member sponsored events; (ii) is operated solely for recreational, fraternal, social, patriotic, political, benevolent, or athletic purposes, and only sells alcoholic beverages incidental to its operation; (iii) has established bylaws, a constitution, or both that govern its activities; and (iv) the affairs and management of which are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting.

"Private function" means any gathering of persons for the purpose of deliberation, education, instruction, entertainment, amusement, or dining that is not intended to be open to the public and for which membership or specific invitation is a prerequisite to entry.

"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, 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. "Public place" shall not include any building owned or leased by (i) the Commonwealth or any agency or institution thereof or (ii) any locality.

"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 place where food is prepared for service to the public on or off the premises, or any place where food is served. Examples of such places include but are not limited to lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs, kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and colleges, and kitchen areas of local correctional facilities subject to standards adopted under § 53.1-68. "Restaurant" shall not include (i) places where packaged or canned foods are manufactured and then distributed to grocery stores or other similar food retailers for sale to

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HB164

59 the public, (ii) mobile points of service to the general public that are outdoors, or (iii) mobile points of
60 service where such service and consumption occur in a private residence or in any location that is not a
61 public place. "Restaurant" shall include any bar or lounge area that is part of such restaurant.

62 "Smoke" or "smoking" means the carrying or holding of any lighted pipe, cigar, or cigarette of any
63 kind, or any other lighted smoking equipment, or the lighting, inhaling, or exhaling of smoke from a
64 pipe, cigar, or cigarette of any kind.

65 "Theater" means any indoor facility or auditorium, open to the public, which is primarily used or
66 designed for the purpose of exhibiting any motion picture, stage production, musical recital, dance,
67 lecture, or other similar performance.

68 § 15.2-2824. Prohibitions on smoking generally; penalty for violation.

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

78 *The provisions of this chapter shall not apply to office, work, or other areas of the Department of*
79 *Corrections that are not entered by the general public in the normal course of business or use of the*
80 *premises.*

81 B. No person shall smoke in any area or place specified in subsection A and any person who
82 continues to smoke in such area or place after having been asked to refrain from smoking shall be
83 subject to a civil penalty of not more than \$25.

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

86 § 15.2-2826. Designation of "No-Smoking" areas; smoking prohibited in "No-Smoking" areas; penalty
87 for violation.

88 A. The proprietor or other person in charge of (i) ~~an a private~~ educational facility, ~~except any public~~
89 ~~elementary, intermediate, or secondary school~~; (ii) a *private* health care facility; (iii) a retail
90 establishment of 15,000 square feet or more serving the general public, including, but not limited to,
91 department stores, grocery stores, drug stores, clothing stores, and shoe stores; ~~and or~~ (iv) *private*
92 recreational facilities shall designate reasonable no-smoking areas, considering the nature of the use and
93 the size of the building.

94 B. The proprietor or other person in charge of a space subject to the provisions of this section shall
95 post signs conspicuous to public view stating "Smoking Permitted" or "No Smoking." Any person failing
96 to post such signs shall be subject to a civil penalty of not more than \$25.

97 C. No person shall smoke in a designated no-smoking area and any person who continues to smoke
98 in such area after having been asked to refrain from smoking shall be subject to a civil penalty of not
99 more than \$25.

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

102 § 15.2-2829. Mandatory provisions of ordinances.

103 If an ordinance is enacted by a locality in accordance with this chapter, it shall provide that it is
104 unlawful for any person to smoke in any of the following places:

105 1. Common areas in ~~an~~ *any* educational facility, including but not limited to, classrooms, hallways,
106 auditoriums, and public meeting rooms;

107 2. School buses and public conveyances; and

108 3. Any of the places governed by § 15.2-2824 or 15.2-2825.

109 § 15.2-2830. Optional provisions of ordinances.

110 If an ordinance is enacted by a locality in accordance with this chapter, it may provide that
111 management shall designate reasonable no-smoking areas, considering the nature of the use and the size
112 of the building, in the following places:

113 1. Retail and service establishments of 15,000 square feet or more serving the general public,
114 including, but not limited to, department stores, grocery stores, drug stores, clothing stores, and shoe
115 stores;

116 2. Educational facilities, except as provided in § 15.2-2824;

117 3. ~~Health~~ *Private health* care facilities;

118 4. Rooms in which a public meeting or hearing is being held, *except as provided in § 15.2-2824*;

119 5. Places of entertainment and cultural facilities, including but not limited to theaters, concert halls,
120 gymnasiums, auditoriums, other enclosed arenas, art galleries, libraries, and museums, *that are not*

- 121** *owned or leased by (i) the Commonwealth or any agency or institution thereof or (ii) any locality;*
122 6. Indoor facilities used for recreational purposes; or
123 7. Other public places.
124 2. That § 15.2-2823 of the Code of Virginia is repealed.