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## SENATE BILL NO. 468

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Local Government  
on February 7, 2012)

(Patron Prior to Substitute—Senator Northam)

A *BILL to amend and reenact §§ 15.2-2824, 15.2-2826, 15.2-2828, 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.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 15.2-2824, 15.2-2826, 15.2-2828, 15.2-2829, and 15.2-2830 of the Code of Virginia are amended and reenacted as follows:**

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

A. Smoking shall be prohibited in (i) elevators, regardless of capacity, except in any open material hoist elevator not intended for use by the general 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~~ in any building owned or leased by the Commonwealth or any agency or institution thereof; (ix) the interior of a child day center licensed pursuant to § 63.2-1701 that is not also used for residential purposes; however, this prohibition shall not apply to any area of a building not utilized by a child day center, unless otherwise prohibited by this chapter; and (x) public restrooms of health care facilities.

*Smoking in correctional facilities shall be in accordance with guidelines set by the Director of the Department of Corrections.*

*Smoking in state mental health facilities, state facilities for care of those with intellectual disabilities, and in health units at state teaching hospitals shall be in accordance with guidelines set by the Commissioner of Behavioral Health and Developmental Services.*

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

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

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

A. The proprietor or other person in charge of (i) ~~an a private educational facility, except any public elementary, intermediate, or secondary school;~~ (ii) a private health care facility; (iii) a retail establishment 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; ~~and or~~ (iv) private recreational facilities shall designate reasonable no-smoking areas, considering the nature of the use and the size of the building.

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

C. No person shall smoke in a designated no-smoking area and 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.

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

§ 15.2-2828. Ordinances regulating smoking generally.

A. No ordinances enacted by a locality prior to January 1, 1990, shall be deemed invalid or unenforceable because of lack of consistency with the provisions of this chapter.

B. Except as provided in § 15.2-2829, no ordinances adopted after January 1, 1990, shall contain provisions or standards that exceed those established in this chapter. *A locality may enact an ordinance, however, that provides that smoking is prohibited in any building owned or leased by that locality.*

C. However, any ordinance may provide that employers may regulate smoking in the private work place as they deem appropriate under the following circumstances: (i) if the designation of smoking and no-smoking areas is the subject of a written agreement between the employer and his employees, the provisions of the written agreement shall control such designation and (ii) a total ban on smoking in any work place shall only be enforced by the employer upon an affirmative vote of a majority of the affected employees voting, unless such ban is the subject of a contract of employment between the

60 employer and the employees as a prior condition of employment. No ordinance adopted pursuant to this  
61 subsection shall affect no-smoking policies established by employers prior to the adoption of such  
62 ordinance.

63 § 15.2-2829. Mandatory provisions of ordinances.

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

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

68 2. School buses and public conveyances; and

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

70 § 15.2-2830. Optional provisions of ordinances.

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

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

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

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

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

80 5. Places of entertainment and cultural facilities, including but not limited to theaters, concert halls,  
81 gymnasiums, auditoriums, other enclosed arenas, art galleries, libraries, and museums, *that are not*  
82 *owned or leased by the Commonwealth or any agency or institution thereof*;

83 6. Indoor facilities used for recreational purposes; or

84 7. Other public places, *except as provided in §§ 15.2-2824 and 15.2-2825*.

85 **2. That § 15.2-2823 of the Code of Virginia is repealed.**