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## SENATE BILL NO. 938

Senate Amendments in [ ] - February 6, 2017

A BILL to amend and reenact § 15.2-2820 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 28.2 of Title 15.2 a section numbered 15.2-2823.1, relating to smoking in outdoor public places.

Patrons Prior to Engrossment—Senator Edwards; Delegate: Rasoul

Referred to Committee on Local Government

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

**1. That § 15.2-2820 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 28.2 of Title 15.2 a section numbered 15.2-2823.1 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.

"Outdoor public place" means [ ~~(i) any public park, recreational facility, or playground established by a locality pursuant to § 15.2-1806;~~ (ii) any public greenway; or (iii) ] any outdoor amphitheater [ or concert venue] owned by a locality.

"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 greenway" means any system of hiking, biking, or horseback riding trails established by a locality or other political subdivision of the Commonwealth in accordance with subsection B of § 15.2-1806.~~ ]

"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.

"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,

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60 short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of  
61 public or private clubs, kitchen facilities of hospitals and nursing homes, dining accommodations of  
62 public and private schools and colleges, and kitchen areas of local correctional facilities subject to  
63 standards adopted under § 53.1-68. "Restaurant" shall not include (i) places where packaged or canned  
64 foods are manufactured and then distributed to grocery stores or other similar food retailers for sale to  
65 the public, (ii) mobile points of service to the general public that are outdoors, or (iii) mobile points of  
66 service where such service and consumption occur in a private residence or in any location that is not a  
67 public place. "Restaurant" shall include any bar or lounge area that is part of such restaurant.

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

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

74 **§ 15.2-2823.1. Smoking in outdoor public places; penalty for violation.**

75 A. Any locality, by ordinance, may designate nonsmoking areas within an outdoor public place. An  
76 ordinance adopted pursuant to this section shall require the locality to install adequate signs within  
77 each outdoor public place that designate the nonsmoking areas within such outdoor public place.

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

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