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HOUSE BILL NO. 1518

Offered January 19, 2018

A BILL to amend and reenact §§ 15.2-2820 and 15.2-2825 of the Code of Virginia, relating to smoking in restaurants; hookah lounges.

Patron—Rush

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2820 and 15.2-2825 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, institution of higher education, 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.

"Hookah lounge" means any establishment, including a restaurant or other establishment where the principal business is the sale of food for consumption on the premises, that is designated specifically for use of a water pipe that is used to smoke tobacco or non-tobacco products by drawing the smoke through water and into an attached hose for inhalation.

"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.

"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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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 **§ 15.2-2825. Smoking in restaurants prohibited; exceptions; posting of signs; penalty for**
69 **violation.**

70 A. Effective December 1, 2009, ~~smoking~~ *Smoking* shall be prohibited and no person shall smoke in
71 any restaurant in the Commonwealth or in any restroom within such restaurant, except that smoking may
72 be permitted in:

73 1. Any place or operation that prepares or stores food for distribution to persons of the same
74 business operation or of a related business operation for service to the public. Examples of such places
75 or operations include the preparation or storage of food for catering services, pushcart operations, hotdog
76 stands, and other mobile points of service;

77 2. Any outdoor area of a restaurant, with or without roof covering, at such times when such outdoor
78 area is not enclosed in whole or in part by any screened walls, roll-up doors, windows or other seasonal
79 or temporary enclosures;

80 3. Any restaurants located on the premises of any manufacturer of tobacco products;

81 4. Any portion of a restaurant that is used exclusively for private functions, provided such functions
82 are limited to those portions of the restaurant that meet the requirements of subdivision 5;

83 5. Any portion of a restaurant that is constructed in such a manner that the area where smoking may
84 be permitted is (i) structurally separated from the portion of the restaurant in which smoking is
85 prohibited and to which ingress and egress is through a door and (ii) separately vented to prevent the
86 recirculation of air from such area to the area of the restaurant where smoking is prohibited. At least
87 one public entrance to the restaurant shall be into an area of the restaurant where smoking is prohibited.
88 For the purposes of the preceding sentence, nothing shall be construed to require the creation of an
89 additional public entrance in cases where the only public entrance to a restaurant in existence as of
90 December 1, 2009, is through an outdoor area described in subdivision 2; ~~and~~

91 6. Any private club; *and*

92 7. *Any hookah lounge.*

93 B. For the purposes of this section:

94 "Proprietor" means the owner, lessee or other person who ultimately controls the activities within the
95 restaurant. The term "proprietor" includes corporations, associations, or partnerships as well as
96 individuals.

97 "Structurally separated" means a stud wall covered with drywall or other building material or other
98 like barrier, which, when completed, extends from the floor to the ceiling, resulting in a physically
99 separated room. Such wall or barrier may include portions that are glass or other gas-impervious
100 building material.

101 C. No individual who is wait staff or bus staff in a restaurant shall be required by the proprietor to
102 work in any area of the restaurant where smoking may be permitted without the consent of such
103 individual. Nothing in this subsection shall be interpreted to create a cause of action against such
104 proprietor.

105 D. The proprietor of any restaurant shall:

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

109 2. Remove all ashtrays and other smoking paraphernalia from any area in the restaurant where
110 smoking is prohibited in accordance with this section.

111 E. Any proprietor of a restaurant who fails to comply with the requirements of this section shall be
112 subject to the civil penalty of not more than \$25.

113 F. No person shall smoke in any area of a restaurant in which smoking is prohibited as provided in
114 this section. Any person who continues to smoke in such area after having been asked to refrain from
115 smoking shall be subject to a civil penalty of not more than \$25.

116 G. It shall be an affirmative defense to a complaint brought against a proprietor for a violation of
117 this section that the proprietor or an employee of such proprietor:

118 1. Posted a "No Smoking" sign as required;

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

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

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

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

125 I. Any local health department or its designee shall, while inspecting a restaurant as otherwise
126 required by law, inspect for compliance with this section.

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