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HOUSE BILL NO. 1239

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 10, 1994)

(Patron Prior to Substitute—Delegate Almand)

A BILL to amend and reenact §§ 15.1-291.2 and 18.2-371.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 22.1-135.1 and by adding in Chapter 2 of Title 32.1 an article numbered 6.2, consisting of sections numbered 32.1-64.3 through 32.1-64.8, relating to the Virginia Healthy Children Act; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-291.2 and 18.2-371.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 22.1-135.1 and by adding in Chapter 2 of Title 32.1 an article numbered 6.2, consisting of sections numbered 32.1-64.3 through 32.1-64.8, as follows:

§ 15.1-291.2. Statewide regulation of smoking.

A. The Commonwealth or any agency thereof and every county, city, or town 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 county, city, or town. 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) ~~common areas in~~ any public elementary, intermediate, and secondary school, including, but not limited to classrooms, libraries, hallways, auditoriums, and other facilities; (iv) hospital emergency rooms; (v) local or district health departments; (vi) polling rooms; and (vii) indoor service lines and cashier lines.

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

D. The proprietor or other person in charge of an educational facility, *except any public elementary, intermediate, or secondary school*, health care facility, or 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, shall designate reasonable no-smoking areas, considering the nature of the use and the size of the building.

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

F. 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 may be subject to a civil penalty of not more than twenty-five dollars.

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

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

§ 18.2-371.2. Prohibiting purchase or possession of tobacco products by minors or sale of tobacco products to minors.

A. No person shall sell to or purchase for any person less than eighteen years of age, knowing or having reason to believe that such person is less than eighteen years of age, any tobacco product, including but not limited to cigarettes and cigars. However, the provisions of this subsection shall not apply to the sale of any tobacco product from a vending machine provided notice is posted on the machine in a conspicuous manner and place indicating that the purchase or possession of tobacco products by minors is unlawful.

B. No person less than eighteen years of age shall purchase or possess any tobacco product including but not limited to cigarettes and cigars. The provisions of this subsection shall not be applicable to the possession of tobacco products by a person less than eighteen years of age making a delivery of tobacco products in pursuance of his employment.

C. A violation of subsection A or B by an individual or by a separate retail establishment shall be

60 punishable by a civil penalty not to exceed \$50 for a first violation and a civil penalty of \$100 for a
61 second violation, and \$500 for a third and any subsequent violation. Any attorney for the
62 Commonwealth of the county or city in which an alleged violation occurred may bring an action to
63 recover the civil penalty, which shall be paid into the state treasury. Any law-enforcement officer may
64 issue a summons for a violation of subsection A or B.

65 D. The proprietor of every retail establishment which offers for sale any tobacco product, including
66 but not limited to cigarettes and cigars, shall post in a conspicuous manner and place a sign or signs
67 indicating that the sale of tobacco products to any person under eighteen years of age is prohibited by
68 law. Any attorney for the county, city or town in which an alleged violation of this subsection occurred
69 may enforce this subsection by civil action to recover a civil penalty not to exceed \$50. The civil
70 penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the
71 county, city or town which instituted the action.

72 E. Nothing contained in this section shall be construed to restrict the power or authority of any
73 county, city or town to adopt and enforce local ordinances to protect the health, safety, and welfare of
74 its citizens, including ordinances which exceed the provisions of this section.

75 F. For the purpose of monitoring compliance with this article, no person under eighteen years of
76 age, who, with parental consent, has been requested by an authorized agent of a local law enforcement
77 agency to purchase, attempt to purchase, or otherwise receive tobacco products as described in
78 § 32.1-64.4, shall be deemed to be in violation of the provisions of this article while engaged in such
79 activities under the direction and control of such authorized agents. In order to retain federal substance
80 abuse block grant funding, now contingent upon enforcing this provision, the Secretaries of Health and
81 Human Resources and Public Safety shall enter into an agreement, on behalf of the Department of
82 Mental Health, Mental Retardation and Substance Abuse Services, for the use of available inspection
83 and licensure programs for the enforcement of this section, including, but not limited to random,
84 unannounced inspections of businesses selling tobacco.

85 E.G. Nothing in this section shall be construed to create a private cause of action.

86 § 22.1-135.1. Smoking prohibited in public schools.

87 The smoking of tobacco products in the public schools of the Commonwealth is prohibited.

88 § 32.1-64.3. Definitions.

89 Notwithstanding the provisions of § 15.1-291.1, for the purposes of this article:

90 "Bar and lounge area" means any establishment or portion of an establishment where one can
91 consume alcoholic beverages and hor d'oeuvres, but excluding any establishment or portion of the
92 establishment having tables or seating facilities where, in consideration of payment, meals are served.

93 "Basic cost" means a nominal price or any other price, less the costs of distribution, to which shall
94 be added the full value of any tobacco tax stamps required by state or federal law that has not been
95 included in the basic cost.

96 "Coupon" means any card, paper, note, form, statement, ticket or other issue distributed for
97 commercial or promotional purposes to be later surrendered by the bearer so as to receive an article,
98 service or accommodation without charge or at a discounted price.

99 "Distribute" means to give; deliver; sell; offer to give, deliver, or sell; or issue, trade or barter.

100 "Health warning" means any tobacco product label mandated by federal law and intended to alert
101 all users of such tobacco product to the health risks associated with tobacco use, including but not
102 limited to warning labels imposed under the Federal Cigarette Labeling and Advertising Act of 1965
103 and the Comprehensive Smokeless Tobacco Education Act of 1986.

104 "Person" means any natural person, company, corporation, firm, partnership, organization, or other
105 legal entity.

106 "Public event" means any event to which the general public is invited or permitted, including but not
107 limited to musical concerts or performances, athletic competitions, public fairs, carnivals, flea markets,
108 bazaars and artistic or cultural performances or exhibitions.

109 "Public place" means any area to which the general public is invited or permitted, including but not
110 limited to public parks, streets, sidewalks or pedestrian concourses, sports arenas, pavilions,
111 gymnasiums, public malls, and property owned, occupied or operated by the Commonwealth of Virginia
112 or any agency or subdivision thereof, but not including retail tobacco stores.

113 "Seller" means any person, company, corporation, firm, partnership, organization, or other legal
114 entity which sells, dispenses, distributes or issues tobacco products for commercial purposes.

115 "Tobacco product" means any substance that contains tobacco, including but not limited to
116 cigarettes, cigars, pipes, snuff, smoking tobacco, or smokeless tobacco.

117 "Tobacco product use" means the smoking of any substance which contains tobacco, including but
118 not limited to cigarettes, cigars, pipes, or other smoking tobacco; having in one's possession a lighted
119 cigarette, cigar, pipe or other substance containing tobacco; or using snuff or other smokeless tobacco.

120 "Tobacco retail store" means any retail establishment specializing in the sale of any tobacco product
121 as defined in this section.

122 § 32.1-64.4. Free distribution of tobacco products in public places or at public events.

123 A. No person shall distribute free tobacco products to the general public in public places or at
124 public events.

125 B. No person shall distribute to members of the general public in public places or at public events a
126 coupon redeemable in the Commonwealth for a free tobacco product or for a sample tobacco product.

127 C. No person engaged in the sale of tobacco products shall accept or redeem, offer to accept or
128 redeem, or hire any person to accept or redeem or offer to accept or redeem, a coupon for free tobacco
129 products or for sample tobacco products from members of the general public.

130 D. The provisions of this section shall not apply to (i) distribution of tobacco products at less than
131 basic cost by tobacco retailers, manufacturers or distributors of such products to any employees of such
132 companies who are of legal age, (ii) private social functions, (iii) tobacco trade shows, (iv) bar and
133 lounge areas as defined in this article, or (v) transactions exclusively between retailers, manufacturers
134 and distributors of tobacco products and businesses engaged in the sale of tobacco products.

135 § 32.1-64.5. Restriction on the distribution of tobacco products other than in sealed packages.

136 Tobacco products shall be distributed only in sealed packages provided by the manufacturer with the
137 required health warning.

138 § 32.1-64.6. Preemption.

139 Nothing contained in this article shall be construed to restrict the power or authority of any county,
140 city or town to adopt and enforce local ordinances to protect the health, safety, and welfare of its
141 citizens, including ordinances which exceed the provisions of this article.

142 § 32.1-64.7. Civil penalties.

143 Any person who violates any provision of this article shall be liable for a civil penalty of \$50 for the
144 first violation, \$100 for a second violation, and \$500 for a third and any subsequent violation.

145 § 32.1-64.8. Exceptions.

146 A. For the purpose of monitoring compliance with this article, no person under eighteen years of
147 age, who, with parental consent, has been requested by an authorized agent of the Board or any local
148 health department to purchase, attempt to purchase, or otherwise receive tobacco products as described
149 in § 32.1-64.4, shall be deemed to be in violation of the provisions of this article while engaged in such
150 activities under the direction and control of such authorized agents.

151 B. No private function, including but not limited to a wedding party, testimonial dinner or other
152 similar gathering in which the seating arrangements are under the exclusive control of the organizer or
153 sponsor of the event, and not the person who owns, manages, operates or controls the use of the facility
154 in which the function is held, shall be considered a public event within the context of the provisions of
155 this article.