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HOUSE BILL NO. 853

Offered January 22, 1996

A BILL to amend and reenact §§ 15.1-291.2 and 18.2-371.2 of the Code of Virginia, relating to use and sale of tobacco.

Patrons—Almand, Connally, Darner and Van Yahres

Referred to Committee on Counties, Cities and Towns

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 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) the interior of any public elementary, intermediate, and secondary school; provided, however, that smoking may be allowed by a local school division in a designated area which is not a common area, including but not limited to, a classroom, library, hallway, restroom, cafeteria, gymnasium, or auditorium after regular school hours so long as all student activities in the building have been concluded; (iv) hospital emergency rooms; (v) local or district health departments; (vi) polling rooms; ~~and~~ (vii) indoor service lines and cashier lines; and (viii) public areas of drugstores and pharmacies.

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, shoe stores, and recreational facilities 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, distribute 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~~ No tobacco product may be sold from a vending machine provided (i) except in compliance with subsection E and (ii) unless 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.

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60 *C. No person shall sell or distribute a tobacco product to any individual who does not demonstrate,*
61 *by producing a driver's license or similar photo identification issued by a government agency, that the*
62 *individual is at least eighteen years of age. Such identification is not required from an individual whom*
63 *the retailer has reason to believe is at least 30 years of age; provided that such appearance shall not*
64 *constitute a defense in any proceeding alleging the sale of a tobacco product to an individual under the*
65 *age of eighteen.*

66 ~~C.D.~~ A violation of subsection A ~~or~~ B or C by an individual or by a separate retail establishment
67 shall be punishable by a civil penalty not to exceed \$50 for a first violation and a civil penalty of \$100
68 for any subsequent violation. Any attorney for the Commonwealth of the county or city in which an
69 alleged violation occurred may bring an action to recover the civil penalty, which shall be paid into the
70 state treasury. Any law-enforcement officer may issue a summons for a violation of subsection A ~~or~~ B
71 or C.

72 ~~D.~~ E. 1. The proprietor of every retail establishment which offers for sale any tobacco product,
73 including but not limited to cigarettes and cigars, shall post in a conspicuous manner and place a sign or
74 signs indicating that the sale of tobacco products to any person under eighteen years of age is prohibited
75 by law.

76 2. No person shall operate a vending machine which dispenses tobacco products unless such
77 machine is located in a:

78 a. Restaurant, and such vending machine shall not be placed in the vestibule area, and no less than
79 fifteen feet inside the entrance to the establishment. Such machine shall be placed within the normal
80 unobstructed line of sight of the proprietor or his agents and not more than twenty-five feet from the
81 cashier's station;

82 b. Hotel or motel, on the main floor, and the machine is located inside the office or lobby, excluding
83 the vestibule, within the normal unobstructed line of sight of the proprietor or his agents and not more
84 than twenty-five feet from the desk clerk's station;

85 c. Private club;

86 d. Retail store where the primary products sold are tobacco products; or

87 e. Place of employment which has an insignificant portion of its regular workforce comprised of
88 persons under the age of eighteen years, and only in such locations as are not accessible to the general
89 public.

90 As an option to subdivision 2a or 2b, a vending machine may be modified to accept only tokens,
91 rather than cash,. However, such machine shall not be located in the vestibule area and shall be no less
92 than fifteen feet from the entrance to the establishment. Any individual who does not demonstrate by
93 photo identification that he is eighteen years of age or older shall not purchase such tokens.

94 3. Any attorney for the county, city or town in which an alleged violation of this subsection occurred
95 may enforce this subsection by civil action to recover a civil penalty not to exceed \$100. The civil
96 penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the
97 county, city or town which instituted the action.

98 ~~E.~~ F. Nothing in this section shall be construed to create a private cause of action.