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SENATE BILL NO. 648

Offered January 17, 2006

A BILL to amend and reenact Chapter 28 (§ 15.2-2800 et seq.) of Title 15.2 and to amend the Code of Virginia by adding in Chapter 2 of Title 32.1 an article numbered 15, consisting of sections numbered 32.1-73.8 through 32.1-73.16, relating to smoking in restaurants and the Virginia Indoor Clean Air Act; civil penalties.

Patron—Bell

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That Chapter 28 (§ 15.2-2800 et seq.) of Title 15.2 of the Code of Virginia is amended and reenacted and the Code of Virginia is amended by adding in Chapter 2 of Title 32.1 an article numbered 15, consisting of sections numbered 32.1-73.8 through 32.1-73.16 as follows:

CHAPTER 28.

~~Virginia Indoor Clean Air Act~~Smoking in Restaurants.

§ 15.2-2800. 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 where one can consume alcoholic beverages and hors d'oeuvres, but excluding any such establishment or portion of the establishment having tables or seating facilities where, in consideration of payment, meals are served.

"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.

"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 restaurant, who ultimately controls the activities within the public place restaurant. 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, restaurant, 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 building, structure, or area, excluding a bar or lounge area as defined in this chapter section, having a seating capacity of fifty or more patrons, where food is available for eating on the premises, in consideration of payment.

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

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

§ 15.2-2801. Statewide regulation of smoking in restaurants.

A. The Commonwealth or any agency thereof and every locality 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 locality. 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.

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59 B. Smoking shall be prohibited in (i) elevators, regardless of capacity, except in any open material
60 hoist elevator, not intended for use by the public; (ii) public school buses; (iii) the interior of any public
61 elementary, intermediate, and secondary school; (iv) hospital emergency rooms; (v) local or district
62 health departments; (vi) polling rooms; (vii) indoor service lines and cashier lines; (viii) public restrooms
63 in any building owned or leased by the Commonwealth or any agency thereof; (ix) the interior of a
64 child day center licensed pursuant to § 63.2-1701 that is not also used for residential purposes; however,
65 this prohibition shall not apply to any area of a building not utilized by a child day center, unless
66 otherwise prohibited by this chapter; and (x) public restrooms of health care facilities.

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

72 D. The proprietor or other person in charge of an educational facility, except any public elementary,
73 intermediate, or secondary school, health care facility, or a retail establishment of 15,000 square feet or
74 more serving the general public, including, but not limited to, department stores, grocery stores, drug
75 stores, clothing stores, shoe stores, and recreational facilities shall designate reasonable no-smoking
76 areas, considering the nature of the use and the size of the building.

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

82 FC. No person shall smoke in a *restaurant's* designated no-smoking area and any person who
83 continues to smoke in such area after having been asked to refrain from smoking may be subject to a
84 civil penalty of not more than twenty-five dollars.

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

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

88 § 15.2-2802. Responsibility of restaurant proprietors and managers.

89 The proprietors or person who manages or otherwise controls any ~~building, structure, space, place, or~~
90 *area restaurant* governed by this chapter in which smoking is not otherwise prohibited may designate
91 rooms or areas in which smoking is permitted as follows:

92 1. Designated smoking areas shall not encompass so much of the ~~building, structure, space, place, or~~
93 *area open to the general public restaurant* that reasonable no-smoking areas, considering the nature of
94 the use and the size of the building, are not provided;

95 2. Designated smoking areas shall be separate to the extent reasonably practicable from those rooms
96 or areas entered by the public in the normal use of the ~~particular restaurant's business or institution~~; and

97 3. In designated smoking areas, ventilation systems and existing physical barriers shall be used when
98 reasonably practicable to minimize the permeation of smoke into no-smoking areas. However, this
99 chapter shall not be construed as requiring physical modifications or alterations to any structure.

100 § 15.2-2803. Ordinances regulating smoking in restaurants.

101 A. No ordinances enacted by a locality prior to January 1, ~~1990~~ 2006, shall be deemed invalid or
102 unenforceable because of lack of consistency with the provisions of this chapter.

103 B. Unless specifically permitted in this chapter, ordinances adopted after January 1, ~~1990~~ 2006, shall
104 not contain provisions or standards which exceed those established in this chapter.

105 § 15.2-2804. Mandatory provisions of ordinances relating to smoking in restaurants.

106 Any ordinance shall provide that it is unlawful for any person to smoke in any of the following
107 places:

108 1. Elevators, regardless of capacity;

109 2. The interior of any public elementary, intermediate, and secondary school;

110 3. Common areas in an educational facility, including, but not limited to, classrooms, hallways,
111 auditoriums, and public meeting rooms;

112 4. Any part of a restaurant designated a "no-smoking" area pursuant to the provisions of this chapter;

113 5. Indoor service lines and cashier areas; and

114 6. School buses and public conveyances.

115 § 15.2-2805. Optional provisions of ordinances relating to smoking in restaurants.

116 Any ordinance may provide that management shall designate reasonable no-smoking areas,
117 considering the nature of the use and the size of the building, in the following places:

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

2. Rooms in which a public meeting or hearing is being held;
 3. Places of entertainment and cultural facilities, including, but not limited to, theaters, concert halls, gymnasiums, auditoriums, other enclosed arenas, art galleries, libraries, and museums;

4. Indoor facilities used for recreational purposes;

5. Other public places; and

6. ~~Any~~ any restaurant having a seating capacity of fifty or more persons ~~that shall have~~ provide 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 that~~ is used exclusively for private functions.

§ 15.2-2806. Exceptions.

The provisions of §§ 15.2-2803 through 15.2-2805 shall not be construed to allow ordinances to regulate smoking in:

1. Bars and lounge areas; *or*

2. ~~Retail tobacco~~ stores;

3. Restaurants, conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions;

4. Office or work areas which are not entered by the general public in the normal course of business or use of the premises;

5. Areas of enclosed shopping centers or malls that are external to the retail stores therein, are used by customers as a route of travel from one store to another, and consist primarily of walkways and seating arrangements; and

6. Lobby areas of hotels, motels, and other establishments open to the public for overnight accommodation.

§ 15.2-2807. Chapter's application to certain ordinances.

Ordinances adopted after January 1, ~~1990~~ 2006, shall not contain provisions or standards which that exceed those established in this chapter *for smoking in restaurants*. 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 employer and the employees as a prior condition of employment. No such ordinance shall affect no-smoking policies established by employers prior to the adoption of such ordinance.

§ 15.2-2808. Posting of signs.

Any person who owns, manages, or otherwise controls any ~~building or area~~ restaurant in which smoking is regulated by an ordinance shall post in an appropriate place, in a clear, conspicuous, and sufficient manner, "Smoking Permitted" signs, "No Smoking" signs, or "No-Smoking Section Available" signs.

§ 15.2-2809. Enforcement of ordinances.

A. Any ordinance may provide a civil penalty of not more than twenty-five dollars for violations of any provision of such ordinance *relating to smoking in restaurants*.

B. Any ordinance may provide that no person shall smoke in a *restaurant's* designated no-smoking area and any person who continues to smoke in such area after being asked to refrain from smoking may be subject to a civil penalty of not more than twenty-five dollars.

C. Any ordinance shall provide that any law-enforcement officer may issue a summons regarding a violation of the ordinance.

§ 15.2-2810. Construction of chapter with respect to other applicable law.

This chapter shall not be construed to permit smoking where it is otherwise prohibited or restricted by Article 15 (32.1-73.8 *et seq.*) of Chapter 2 of Title 32.1 or other applicable provisions of law.

Article 15.

Virginia Indoor Clean Air Act.

§ 32.1-73.8. Definitions.

As used in this article, unless the context requires a different meaning:

"Educational facility" means any building used for the instruction of enrolled students, including, but not limited to, any child day care center, nursery school, public or private school, college, university, medical school, law school, or career and technical education school.

"Healthcare facility" means any local or district health department, and any other office or institution, regardless of specialty or whether required to be or how licensed, that provides care or treatment to consumers of healthcare for physical or mental conditions or substance abuse on an

182 outpatient or inpatient basis, including, but not limited to, any office or clinic delivering any dental,
183 medical, or other health services such as physical therapy practices and weight control clinics; any
184 hospital; any nursing facility or nursing home; any residential facility for children or adults such as
185 group homes, campus style facilities, homes for the aging or chronically ill, assisted living facilities,
186 continuing care facilities, supervised living facilities, and life-sharing communities; any laboratory or
187 testing facility in which patients are seen, such as free-standing radiology and magnetic resonance
188 imaging facilities; and all waiting rooms, hallways, private rooms, semiprivate rooms, and wards or
189 floors within such office or institution.

190 "Private function" means any gathering of persons for the purpose of deliberation, education,
191 instruction, entertainment, amusement, or dining that is not intended to be open to the public and for
192 which membership or specific invitation is a prerequisite to entry.

193 "Proprietor" means any person who owns, leases, operates, manages, or otherwise has control of
194 any establishment, building, or enclosed area. The term "proprietor" includes corporations, associations,
195 or partnerships as well as individuals.

196 "Public conveyance" or "public vehicle" means any air, land, or water vehicle used for the mass
197 transportation of persons in intrastate travel for compensation, including, but not limited to, any
198 airplane, train, bus, or boat that is not subject to federal smoking regulations.

199 "Public place" means any enclosed area to which the public is invited or in which the public is
200 permitted, including but not limited to, banks, bars, educational facilities, healthcare facilities, hotel and
201 motel lobbies, laundromats, public transportation facilities, reception areas, retail food production and
202 marketing establishments, retail services establishments, retail stores, shopping malls, sports arenas,
203 theaters, and waiting rooms. "Public place" shall include a private club when being used for a function
204 to which the general public is invited; however, a private residence is not a "public place" unless being
205 used as a child care, adult day care, or healthcare facility.

206 "Recreational facility" means any enclosed, indoor area open to the general public for any
207 recreational purpose, including, but not limited to, any indoor area used as a bowling alley, dance hall,
208 gaming facility, poolroom, stadium, arena, skating rink, video game facility, or senior citizen
209 recreational facility.

210 "Restaurant" means any eating establishment, including, but not limited to, fast food enterprises,
211 coffee shops, cafeterias, and other entities licensed as such by the Board of Health, including a bar area
212 within a restaurant. Restaurants shall be governed by the provisions of Chapter 28 (§ 15.2-2800 et seq.)
213 of Title 15.2.

214 "Secondhand smoke" means exhaled smoke and smoke emanating from any burning tobacco product
215 or any other product while being smoked.

216 "Smoke" or "smoking" means the inhaling, exhaling, burning or carrying or holding of any lighted
217 cigar, cigarette, pipe, or other tobacco product in any manner or form.

218 "Specialty tobacco store" means a retail store used primarily for the sale of tobacco products and
219 accessories that receives at least 80% of its gross receipts from the sale of tobacco products or
220 accessories for tobacco products.

221 "Theater" means any indoor facility or auditorium open to the public that is primarily used or
222 designed for the purpose of exhibiting any motion picture, stage production, musical recital or concert,
223 dance performance, lecture, or other similar performance.

224 § 32.1-73.9. Smoking restrictions in public places; restaurants subject to Chapter 28 (15.2-2800 et
225 seq.) of Title 15.2.

226 A. In order to reduce exposure to environmental tobacco smoke, smoking shall not be permitted and
227 no person shall smoke in any indoor enclosed area to which the general public is invited or in which
228 the general public is permitted including, but not limited to:

229 1. Child day care facilities, regardless of whether required to be licensed or exempted from such
230 licensure;

231 2. Common areas in apartment buildings, condominiums, and other multiple-unit residential facilities
232 including, but not limited to, exercise rooms, hallways, lobbies, meeting rooms, laundry rooms, and
233 enclosed swimming and other recreational areas;

234 3. Common areas and at least 80% of all accommodations offered for lease or rent to the public in
235 hotels and motels regulated by the Board of Health pursuant to Title 35.1. For the purposes of this
236 article, common areas shall include, but not be limited to, exercise rooms, hallways, lobbies, meeting
237 rooms, laundry rooms, and enclosed swimming and other recreational facilities;

238 4. Educational facilities;

239 5. Elevators;

240 6. Grocery stores; other retail stores, convenience stores, and indoor shopping malls;

241 7. Health care facilities;

242 8. Public conveyances;

243 9. Public places;

10. Public restrooms, lobbies, reception areas, hallways, and other common-use areas in any building;

11. Recreational facilities;

12. Theaters; and

13. Workplaces not exempted herein.

B. Smoking in restaurants shall continue to be defined and governed in compliance with Chapter 28 (§ 15.2-1800 et seq.) of Title 15.2.

§ 32.1-73.10. Exceptions; discretion of proprietors.

A. Unless otherwise provided herein, this article shall not apply to:

1. Private homes, private residences, and private automobiles, unless such homes, residences, or vehicles are used in the operation of any establishment or facility in which smoking is prohibited by this article;

2. Any indoor area where private functions are being held when the arrangements for the private functions are under the control of the sponsor of the function;

3. Any hotel or motel room clearly designated as a "smoking" room so long as such rooms do not exceed 20% of the total accommodations within the establishment that are offered for lease or rent to the public; and

4. Specialty tobacco stores.

B. This article shall not prevent or be construed to limit the right of any proprietor of any restaurant covered by Chapter 28 (§ 15.2-2800 et seq.) of Title 15.2 or any establishment excepted hereunder from prohibiting smoking in an establishment or private office or work area or the right of any principal or administrator of any educational facility, as defined in § 32.1-73.8, from adopting smoking prohibitions that are more stringent than the requirements of this article, including restrictions on smoking in areas that are not enclosed that are located on the educational facility's campus.

§ 32.1-73.11. Posting of signs on buildings or areas in which smoking is permitted.

The proprietor of any building or area in which smoking is not prohibited by this article who allows smoking in any building or area or part thereof shall post and properly maintain signs in an appropriate place on such building or area, in a clear, conspicuous, and prominent manner, stating "Warning: Smoking Permitted." This section shall not be construed as requiring the posting of signs on private homes or residences or private vehicles unless used as or in the operation of any establishment or facility in which smoking is prohibited by this article.

§ 32.1-73.12. Penalties.

A. No person shall smoke in any area in which public smoking is prohibited pursuant to this article. 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 \$100. Any person who commits a subsequent offense shall be subject to a civil penalty of not more than \$250.

B. Any proprietor of any establishment, building, or area that is subject to the smoking restrictions provided in this article who fails to comply with such restrictions shall be subject to a civil penalty of not more than \$200 for the first offense and \$500 for any subsequent offense.

C. Any law enforcement officer may issue a summons regarding a violation of this article.

§ 32.1-73.13. Retaliation prohibited.

No person or employer shall, in any manner, retaliate against any other person, employee, applicant for employment, or customer for filing any complaint or report about or seeking prosecution of any violation of this article.

§ 32.1-73.14. Enforcement; education.

A. The Board of Health shall promulgate such regulations as may be necessary and appropriate to enforce the provisions of this article.

By January 31 of each year, the Board shall annually report statistical and other data relating to the enforcement of this article.

B. In order to encourage compliance with this article and to inform the public of the health benefits of avoiding exposure to secondhand smoke, the State Health Commissioner shall develop and implement an education program to explain the medical rationale, environmental purpose, requirements, and benefits of this article to the citizens of the Commonwealth, as well as business leaders, and administrative and management staff.

§ 32.1-73.15. Construction of article.

This article shall not be construed to permit smoking where it is otherwise prohibited by the proprietor of any restaurant, establishment, building, or area, by the provisions of Chapter 28 (§ 15.2-2800 et seq.) of Title 15.2 or by any rule or regulation of a state or local agency or any other applicable law, including any ordinance duly adopted by any local governing body.

§ 32.1-73.16. Local ordinances.

Any local governing body may adopt and enforce ordinances relating to smoking that (i) may enforce

305 *compliance with the standards established herein or (ii) may enforce compliance with standards*
306 *established herein as well as any locally established standards that are more stringent than the*
307 *standards detailed herein.*