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SENATE BILL NO. 1382

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact §§ 35.1-1 and 58.1-3833 of the Code of Virginia, and to amend the Code of Virginia by adding in Title 35.1 a chapter numbered 3.1, consisting of sections numbered 35.1-24.1 through 35.1-24.3, relating to smoking in restaurants; civil penalties.

Patron—Stolle

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 35.1-1 and 58.1-3833 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 35.1 a chapter numbered 3.1, consisting of sections numbered 35.1-24.1 through 35.1-24.3, as follows:

§ 35.1-1. Definitions.

As used in this title unless the context requires otherwise or it is otherwise provided:

~~1.~~ "Bar" means an indoor area where alcoholic beverages are poured and served.

"Board" or "State Board" means the State Board of Health.

~~2.~~ "Campground" means and includes but is not limited to a travel trailer camp, recreation camp, family campground, camping resort, camping community, or any other area, place, parcel, or tract of land, by whatever name called, on which three or more campsites are occupied or intended for occupancy, or facilities are established or maintained, wholly or in part, for the accommodation of camping units for periods of overnight or longer, whether the use of the campsites and facilities is granted gratuitously, or by rental fee, lease, or conditional sale, or by covenants, restrictions, and easements. "Campground" does not include a summer camp, migrant labor camp, or park for mobile homes as defined in this section and in §§ 32.1-203 and 36-71, or a construction camp, storage area for unoccupied camping units, or property upon which the individual owner may choose to camp and not be prohibited or encumbered by covenants, restrictions, and conditions from providing his sanitary facilities within his property lines.

~~3.~~ "Camping unit" means and includes a tent, tent trailer, travel trailer, camping trailer, pickup camper, motor home, and any other device or vehicular type structure for use as temporary living quarters or shelter during periods of recreation, vacation, leisure time, or travel.

~~4.~~ "Campsite" means and includes any plot of ground within a campground used or intended for occupation by the camping unit.

"Cigar bar" means any restaurant that generates 10 percent or more of its total annual revenue from the on-site sale of cigars, excluding sales from vending machines, or the rental of on-site humidors.

~~5.~~ "Commissioner" means the State Health Commissioner.

~~6.~~ "Department" means the State Department of Health.

"Designated bar area" means a space within a restaurant designated by the proprietor (i) the primary purpose of which is the sale and service of alcoholic beverages for consumption on the premises, and where the sale or service of food is intended to be only incidental to the consumption of such beverages; (ii) that has signage specifically informing patrons that smoking is permitted in the area; and (iii) that includes the bar itself and the immediately adjacent bar service area but does not include the common areas of the enclosed restaurant.

"Designated smoking room" means a space within a restaurant designated by the proprietor (i) that is completely enclosed with walls, partitions, floor, and ceiling, except for openings for light, ventilation, and ingress and egress apart from common areas of the restaurant; (ii) that contains no more than 25 percent of the total seating of the restaurant; (iii) that has signage specifically informing patrons that smoking is permitted in the room; and (iv) with respect to a building constructed after January 1, 2010, for which a certificate of occupancy has been issued, that (a) is separately ventilated by a system approved by the Department of Health and (b) ventilates the room in such a manner as to prevent any smoke from leaving the room and traveling to the nonsmoking areas.

~~7.~~ "Hotel" means any place offering to the public for compensation transitory lodging or sleeping accommodations, overnight or otherwise, including but not limited to facilities known by varying nomenclatures or designations as hotels, motels, travel lodges, tourist homes, or hostels.

~~8.~~ "Person" means an individual, corporation, partnership, association, or any other legal entity.

"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 at all times; (ii) is operated

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SB1382

59 *solely for recreational, fraternal, social, patriotic, political, benevolent, or athletic purposes, and only*
60 *sells alcoholic beverages incidental to its operation; (iii) has established bylaws, a constitution, or both*
61 *that govern its activities; and (iv) the affairs and management of which are conducted by a board of*
62 *directors, executive committee, or similar body chosen by the members at an annual meeting.*

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

66 9. "Restaurant" means any one of the following:

67 a. Any place where food is prepared for service to the public on or off the premises, or any place
68 where food is served. Examples of such places include but are not limited to lunchrooms, short order
69 places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private
70 clubs, kitchen facilities of hospitals and nursing homes, dining accommodations of public and private
71 schools and colleges, and kitchen areas of local correctional facilities subject to standards adopted under
72 § 53.1-68. Excluded from the definition are places manufacturing packaged or canned foods which are
73 distributed to grocery stores or other similar food retailers for sale to the public.

74 b. Any place or operation which prepares or stores food for distribution to persons of the same
75 business operation or of a related business operation for service to the public. Examples of such places
76 or operations include but are not limited to operations preparing or storing food for catering services,
77 push cart operations, hotdog stands, and other mobile points of service. Such mobile points of service
78 are also deemed to be restaurants unless the point of service and of consumption is in a private
79 residence.

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

83 10. "Summer camp" means and includes any building, tent, or vehicle, or group of buildings, tents,
84 or vehicles, if operated as one place or establishment, or any other place or establishment, public or
85 private, together with the land and waters adjacent thereto, which is operated or used in this
86 Commonwealth for the entertainment, education, recreation, religious instruction or activities, physical
87 education, or health of persons under eighteen years of age who are not related to the operator of such
88 place or establishment by blood or marriage within the third degree of consanguinity or affinity, if
89 twelve or more such persons at any one time are accommodated, gratuitously or for compensation,
90 overnight and during any portion of more than two consecutive days.

91 CHAPTER 3.1.

92 SMOKING IN RESTAURANTS.

93 § 35.1-24.1. *Smoking prohibited; exceptions.*

94 A. *Smoking shall not be permitted and no person shall smoke in any restaurant in the*
95 *Commonwealth, except in:*

96 1. *Restaurants holding a retail on-premises license, issued by the Alcoholic Beverage Control Board*
97 *in accordance with Title 4.1, during any period in which the proprietor of the restaurant allows entry*
98 *only to members of the public who are 18 years of age or older;*

99 2. *Designated bar areas of restaurants holding a retail on-premises license issued by the Alcoholic*
100 *Beverage Control Board in accordance with Title 4.1; except that for any restaurant for which a*
101 *building permit has been issued on or after July 1, 2009, that will result in the creation of a new*
102 *restaurant or increase the total square footage of an existing restaurant, smoking shall not be permitted*
103 *and no person shall smoke in any area of the restaurant other than in a designated smoking room;*

104 3. *A designated smoking room in a restaurant;*

105 4. *Any outdoor area of a restaurant provided such area is not enclosed by screened walls, roll-up*
106 *doors, windows, or other seasonal or temporary enclosures, regardless of whether the roll-up doors,*
107 *windows, or other seasonal or temporary enclosures are open or closed;*

108 5. *Cigar bars;*

109 6. *Private clubs;*

110 7. *Private functions;*

111 8. *Restaurants located within the facilities of a tobacco manufacturer; and*

112 9. *Restaurants as defined in § 35.1-1.*

113 B. *A restaurant that permits smoking pursuant to an exception under subdivision A shall designate a*
114 *no-smoking area, if required pursuant to subsection C of § 15.2-2801.*

115 § 35.1-24.2. *Posting of "No Smoking" signs; removal of ashtrays.*

116 *"No Smoking" signs or the international "no smoking" symbol, consisting of a pictorial*
117 *representation of a burning cigarette enclosed in a red circle with a bar across it, shall be clearly and*
118 *conspicuously posted in every place where smoking is prohibited by this chapter, by the owner,*
119 *operator, manager, or other person in control of that place. A sign in a restaurant that permits smoking*
120 *in accordance with § 35.1-24.1 shall additionally state that smoking is permitted only in the designated*

bar area or limited to specific hours during which entry is restricted to members of the public who are 18 years of age or older.

§ 35.1-24.3. Penalties.

A. No person shall smoke in any area in which public smoking is prohibited pursuant to this chapter or that has been designated a no-smoking area by the proprietor or other person in charge. 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 or other person in charge of any establishment, building, or area that is subject to the smoking restrictions provided in this chapter 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. It shall be an affirmative defense to a complaint brought against a proprietor for a violation of this chapter that a proprietor or an employee of such proprietor:

1. Posted a "No Smoking" sign as provided by § 35.1-24.2;

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

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

4. If the individual continued to smoke after an initial warning, asked the individual who was smoking in a prohibited area to leave the establishment.

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

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

§ 58.1-3833. County food and beverage tax.

A. Any county is hereby authorized to levy a tax on food and beverages sold, for human consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed four percent of the amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold through vending machines or by any person described in subdivisions 1, 2, 3, and 5 of § 35.1-25, as well as nonprofit cafeterias in public schools, nursing homes, and hospitals. Grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store selling such items.

This tax shall be levied only if the tax is approved in a referendum within the county which shall be held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on the filing of a petition signed by a number of registered voters of the county equal in number to 10 percent of the number of voters registered in the county, as appropriate on January 1 of the year in which the petition is filed with the court of such county. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county once a week for three consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such resolution of the board of supervisors or such petition states for what projects and/or purposes the revenues collected from the tax are to be used, then the question on the ballot for the referendum shall include language stating for what projects and/or purposes the revenues collected from the tax are to be used.

The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.) of this title. Collection of such tax shall be in a manner prescribed by the governing body.

B. Notwithstanding the provisions of subsection A of this section, Roanoke County, Rockbridge County, Frederick County, Arlington County, and Montgomery County, are hereby authorized to levy a tax on food and beverages sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as modified in subsection A above and subject to the same exemptions, not to exceed four percent of the amount charged for such food and beverages, provided that the governing body of the respective county holds a public hearing before adopting a local food and beverage tax, and the governing body by unanimous vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe.

C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax. The wrongful and fraudulent use of such collections other than remittance of the same as provided by law shall constitute embezzlement pursuant to § 18.2-111.

182 D. No county which has heretofore adopted an ordinance pursuant to subsection A of this section
183 shall be required to submit an amendment to its meals tax ordinance to the voters in a referendum.

184 E. Notwithstanding any other provision of this section, no locality shall levy any tax under this
185 section upon (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition
186 to the sales price; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or
187 service charge added by the restaurant in addition to the sales price, but only to the extent that such
188 mandatory gratuity or service charge does not exceed 20% of the sales price; or (iii) alcoholic beverages
189 sold in factory sealed containers and purchased for off-premises consumption or food purchased for
190 human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended,
191 and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad
192 bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment
193 of vegetables, and nonfactory sealed beverages.

194 **2. That the provisions of this act shall become effective on January 1, 2010.**