

LD8230156

HOUSE BILL NO. 1009

Offered January 25, 1994

A BILL to amend and reenact §§ 15.1-291.1, 15.1-291.2, 15.1-291.3, 15.1-291.4, and 18.2-371.2 of the Code of Virginia and to repeal §§ 15.1-291.5 through 15.1-291.10, relating to restrictions on tobacco use.

Patrons—Cohen, Almand, Callahan, Christian, Connally, Darner, Hull, Jones, J.C., Mayer, McClure, Moore, Morgan, Plum, Puller, Purkey, Scott and Van Landingham; Senators: Calhoun, Gartlan, Howell, Schewel and Waddell

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-291.1, 15.1-291.2, 15.1-291.3, 15.1-291.4, and 18.2-371.2 of the Code of Virginia are amended and reenacted as follows:

§ 15.1-291.1. 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 vocational 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, adult care residence, supervised living facility, or ambulatory medical and surgical center.

"Person" means any person, firm, partnership, association, corporation, company, or organization of any kind.

"Private work place" means any office or work area which 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 county, city, or town, 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 area admissible to the public and used as a stadium, arena, bingo hall, bowling alley, skating rink, video game room, pool hall, senior citizen recreational facility or other place for entertainment or relaxation.

"Restaurant" means any building, structure, or area, excluding a bar or lounge area as defined in this chapter, having a seating capacity of fifty or more patrons, where food is available for eating on the premises, in consideration of payment.

"Service line and cashier line" means any area where money, goods or information are distributed, regardless of how many people are in the line or group, and includes both the employees and the customers.

"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.

§ 15.1-291.2. Statewide regulation of smoking.

A. The Commonwealth or any agency thereof and every county, city, or town shall provide

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60 reasonable no-smoking areas, considering the nature of the use and the size of the building, in any
61 building owned or leased by the Commonwealth or any agency thereof or a county, city, or town. The
62 provisions of this chapter shall not apply to office, work or other areas of the Department of Corrections
63 which are not entered by the general public in the normal course of business or use of the premises.

64 B. Smoking shall be prohibited in (i) elevators, regardless of capacity, except in any open material
65 hoist elevator, not intended for use by the public; (ii) public school buses; (iii) ~~common areas in any~~
66 ~~public elementary, intermediate, and secondary school, including, but not limited to classrooms, libraries,~~
67 ~~hallways, auditoriums, and other facilities;~~ (iv) hospital emergency rooms; (v) local ~~or, district or state~~
68 ~~health departments;~~ (vi) polling rooms; ~~and~~ (vii) indoor service lines and cashier lines; (viii) *conference*
69 *rooms, hearing rooms, court rooms, jury deliberation rooms, voter registration rooms, prison visiting*
70 *rooms or other public waiting rooms;* (ix) *licensed day-care centers, nursery schools, prekindergartens*
71 *or kindergartens;* (x) *enclosed common public areas of food stores, convenience stores or service*
72 *stations;* (xi) *enclosed common public areas in shopping malls, airports, bus stations, and train stations,*
73 *including, but not limited to, restrooms, lobbies, and passageways;* (xii) *all enclosed common work*
74 *areas, cubicles, restrooms, and meeting rooms in any work place;* (xiii) *public conveyances;* and (xiv)
75 *enclosed public lobbies, waiting rooms, entrance foyers, hallways, and corridors.*

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

81 D. The proprietor or other person in charge of an educational facility, health care facility, or a retail
82 establishment of 15,000 square feet or more serving the general public, including, but not limited to,
83 department stores, grocery stores, drug stores, clothing stores, and shoe stores, shall ~~designate reasonable~~
84 ~~no-smoking areas, considering the nature of the use and the size of the building prohibit smoking in~~
85 ~~those facilities and post appropriate signs, or he may provide a separate, enclosed facility which is~~
86 ~~enclosed and ventilated in such a manner so as to ensure that the air therefrom does not enter other~~
87 ~~parts of the facility, and may post appropriate signs. No person, other than a patient or adult care~~
88 ~~resident, shall smoke in any certified nursing facility or adult care residence.~~

89 *The proprietor or other person in charge of a recreational facility shall designate at least one-half of*
90 *the public areas as no-smoking areas in addition to those areas mentioned elsewhere.*

91 E. The proprietor or other person in charge of a space subject to the provisions of this chapter shall
92 post signs conspicuous to public view stating ~~"Smoking Permitted" or "No Smoking" or "Smoke-Free~~
93 ~~Facility" or showing the international no smoking symbol,~~ and in restaurants, signs conspicuous to
94 ordinary public view at or near each public entrance stating "No-Smoking Section Available" *or*
95 *"Smoke-Free Facility."* Any person failing to post such signs may be subject to a civil penalty of not
96 more than ~~twenty-five~~ *one hundred* dollars.

97 F. No person shall smoke in a designated no-smoking area and any person who continues to smoke
98 in such area after having been asked to refrain from smoking may be subject to a civil penalty of not
99 more than twenty-five dollars.

100 G. Any law-enforcement officer may issue a summons regarding a violation of this chapter. *Upon*
101 *receipt of a citizen request regarding a violation of this Act, any law- enforcement officer or county or*
102 *city attorney or Commonwealth's attorney shall, within a reasonable amount of time, enforce the*
103 *provisions of this Act.*

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

106 § 15.1-291.3. Responsibility of building proprietors and managers.

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

110 1. Designated smoking areas shall not encompass so much of the building, structure, space, place, or
111 area open to the general public that reasonable no-smoking areas, considering the nature of the use and
112 the size of the building, are not provided;

113 2. Designated smoking areas shall be separate to the extent reasonably practicable from those rooms
114 or areas entered by the public in the normal use of the particular business or institution; and

115 3. In designated smoking areas, ventilation systems and existing physical barriers shall be used when
116 reasonably practicable to minimize the permeation of smoke into no-smoking areas. However, this
117 chapter shall not be construed as requiring physical modifications or alterations to any structure may
118 designate the entire building or area as smoke-free instead of designating parts of the building as
119 no-smoking areas.

120 § 15.1-291.4. Local ordinances regulating smoking.

121 A. No ordinances enacted by a county, city, or town prior to January 1, 1990, shall be deemed

invalid or unenforceable because of lack of consistency with the provisions of this chapter.

B. Unless specifically permitted herein, local ordinances adopted after January 1, 1990, shall not contain provisions or standards which exceed those established in this chapter. Any county, city, or town may enact ordinances to protect the health, safety, and welfare of its citizens, including ordinances which exceed the provisions of this chapter.

§ 18.2-371.2. Prohibiting sale or distribution of tobacco products to minors; enforcement; random, unannounced inspections, etc.

A. ~~No person~~ *It shall be unlawful for any manufacturer, retailer, or distributor of tobacco products shall sell to sell or purchase for distribute tobacco products to any person that he knows to be less than under 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 . Every proprietor of a business or owner or operator of a building or a portion thereof offering to sell any tobacco product from a vending machine sale or service line provided shall post notice is posted on the machine or near the service line in a conspicuous manner and place indicating that the purchase or possession of tobacco products by minors is unlawful.*

B. ~~No person less than under eighteen years of age shall purchase or possess any tobacco product including but not limited to cigarettes and cigars. The provisions of this~~ *However, this subsection shall not be applicable to the temporary possession of unlighted tobacco products by a person less than eighteen years of age while 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 Violations of this section shall be punishable by a civil penalty not to exceed \$50 for a first violation and a civil penalty of \$100 \$200 for any subsequent violation. Each sale or distribution to a person less than eighteen years of age shall be considered a separate violation. Failure to pay a civil penalty levied under this section within fifteen days of receiving a summons shall result in doubling of such civil penalty.~~

~~Any attorney for the Commonwealth of the county or city in which an alleged violation occurred may bring an action to recover the civil penalty, which shall be paid into the state treasury. Any law-enforcement officer may issue a summons for a violation of subsection A or B.~~

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

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

~~Any attorney for the Commonwealth of the county or city in which an alleged violation occurred or any attorney for the county or city in which an alleged violation occurred may bring an action to recover the civil penalty; civil penalties recovered by an attorney for the Commonwealth shall be paid into the Literary Fund to be used for educational purposes; civil penalties recovered by an attorney for the county or city shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county, city or town which instituted the action. Law-enforcement officers shall issue summons for violations of this section.~~

~~In order to retain federal substance abuse block grant funding, now contingent upon enforcing this provision, the Secretaries of Health and Human Resources and Public Safety shall enter into an agreement, on behalf of the Department of Mental Health, Mental Retardation and Substance Abuse Services, for the use of available inspection and licensure programs for the enforcement of this section, including, but not limited to, random, unannounced inspections of businesses selling tobacco.~~

2. That §§ 15.1-291.5 through 15.1-291.10 of the Code of Virginia are repealed.