

# Breathe easy, Va.

## Restaurants and smoking in Virginia FAQs

**Governor Kaine signed legislation earlier this year that prohibits smoking in restaurants. When does the new law take effect?**

December 1, 2009.

**What are the key provisions of the law?**

Effective December 1, 2009, smoking will be prohibited in restaurants that are open to the public with a few exceptions.

**What kinds of establishments are exempt from the law?**

- Any place or operation that prepares or stores food for distribution to persons of the same business operation or of a related business operation for service to the public. Examples include operations that prepare food for catering services, pushcart operations, hotdog stands or other mobile points of service.
- Any outdoor area of a restaurant, with or without a roof covering, provided the outdoor area is not enclosed by temporary enclosures.
- Any restaurant located on the premises of any manufacturer of tobacco products.
- Any portion of a restaurant that is constructed in a manner that the area where smoking is permitted is (i) structurally separated from the non-smoking areas of the restaurant and (ii) separately vented to prevent the recirculation of air from the smoking area to the non-smoking area. At least one public entrance must be into an area where smoking is not permitted.
- Any portion of a restaurant that is used exclusively for private functions provided the functions are limited to those areas that are structurally separate and vented separately as described above.

**What about private clubs? Does the ban prohibit smoking in restaurants operated in private clubs?**

No. Private clubs are exempt from the ban. Private clubs are defined as organizations that are:

- are used exclusively for club purposes or events;
- are operated solely for recreational, fraternal, social, patriotic, political, benevolent, or athletic purposes;
- have established bylaws, a constitution, or both that govern its activities; and
- conduct organizational matters and management by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. Examples would include local VFWs or lodges.

**Are there any "grandfathering" provisions in the law?**

Yes. The law does not require the creation of an additional public entrance in cases where the only public entrance to a restaurant in existence as of December 1, 2009, is through an outdoor dining area of the restaurant where smoking is permitted.

**To what extent will smoking be allowed in outdoor areas?**

Smoking can be permitted in outdoor areas of a restaurant provided the outdoor area is not enclosed by any screened wall, roll-up doors or other temporary enclosures. However, if the outdoor area is enclosed, smoking may be permitted if the enclosed smoking area is structurally separate from the non-smoking areas of the restaurant and is vented to prevent recirculation of air from the smoking area into the non-smoking area.

**Does the law make any exemptions for restaurants with fewer than 50 seats?**

No. The law applies to all restaurants, regardless of the seating capacity.

**Does the law have any provisions for smoking after hours when children are not present?**

No. The law is in effect all times the restaurant is in operation.

**Can a restaurant allow smoking throughout the facility if they advertise this fact to their patrons by posting signs alerting them that smoking is allowed anywhere in the restaurant?**

No. The law requires either no smoking or smoking in very specifically designated areas.

### **Does the law affect bars and lounges?**

Yes. There are no stand alone bars in Virginia. In Virginia to receive an on-premises ABC license from the Alcoholic Beverage Control Board, the establishment must serve food and be able to show a set percentage of sales attributable to food.

### **Must a restaurant that is exempted from the ban permit patrons to smoke?**


No. The owner or proprietor of the establishment may voluntarily prohibit smoking in any and all areas of the restaurant.

### **Does the law include any provisions for employees who work in areas where the law permits smoking?**

Yes. Unless they consent, wait or bus staff may not be required by the proprietor to work in any area of the restaurant where smoking may be permitted.

### **How will the ban be enforced? What role will VDH have in enforcing the ban?**

During their routine inspections, local health department environmental health specialists will determine compliance with sections of the law that require the proprietor to:

- Post signs stating “No Smoking” or containing the international “No Smoking” symbol  clearly and conspicuously in every restaurant where smoking is prohibited;
- Remove all ashtrays and other smoking paraphernalia from all areas of the restaurant where smoking is prohibited; and
- Assess, with the assistance of others, whether any separate smoking rooms comply with requirements of the law.

### **What types of policies and procedures will VDH use to implement the law?**

VDH recently issued a policy for local health department environmental health staff that summarizes VDH's role in implementing this new law. Similar guidelines should be available for restaurants very soon.

### **How are bowling alleys, skating rinks and similar facilities that have a snack bar affected by the new law?**

If the facility prepares and serves food the law applies and compliance options are:

- Go smoke free throughout the entire facility.
- Cease preparation and service of food and the ban would not apply.
- Comply with the law by modifying the structure so the smoking area is structurally separate from the non-smoking areas and vent the smoking area to prevent re-circulation of air from the smoking area into the non-smoking area. There also must be at least one public entrance into the non-smoking area.

**How are bingo halls that have a snack bar affected by the new law?**

If the bingo hall prepares and serves food the law applies and compliance options are:

- Go smoke free throughout the entire facility.
- Cease preparation and service of food and the ban would not apply.
- Comply with the law by modifying the structure so the smoking area is structurally separate from the non-smoking areas and vent the smoking area to prevent re-circulation of air from the smoking area into the non-smoking area.

**If a private club, such as a VFW or a Moose lodge, holds bingo games in their building and the games are open to the public, does the ban apply?**

No. This is a private club sponsored event and is exempted under the law.

**Does the same apply to volunteer fire departments and rescue squads that hold bingo games in their facility?**

No. Volunteer fire departments and rescue squads are not private clubs. If they serve food, the law applies and they must either prohibit smoking or comply with the law by modifying the structure so the smoking area is structurally separate from the non-smoking areas and vent the smoking area to prevent re-circulation of air from the smoking area into the non-smoking area.

**How are hookah lounges and cigar bars affected by the new law?**

The ban applies to both hookah lounges and cigar bars if they prepare and serve food. There is no exemption in the law for these facilities. Their options are:

- Cease preparation and service of food and serve only pre-packaged foods and bottled or canned drinks. Then the ban would not apply. However, if the facility has an ABC license, it may be affected.
- Comply with the law by modifying the structure so the smoking area is structurally separate from the non-smoking areas and vent the smoking area to prevent re-circulation of air from the smoking area into the non-smoking area.

**Are convenience stores and gas stations under the jurisdiction of the Virginia Department of Agriculture and Consumer Services that prepare and serve food but have fewer than 15 seats subject to the ban?**

The Virginia Department of Agriculture and Consumer Services has reviewed the law and the ban does apply to these facilities.

**What about restrooms in restaurants? Do they have to be smoke free?**

Yes. The law prohibits smoking in all restrooms in a restaurant.

**Can the restrooms be located adjacent to or in the smoking area of a restaurant? If so, does the owner have to provide a "smoke-free path" from the non-smoking area to the restrooms?**

Yes, the restrooms can be located adjacent to or in the smoking area of a restaurant but smoking in the restrooms is prohibited. The smoking area must be physically separated from the restrooms and must be vented separately from the restrooms. However, the law does not require a smoke-free path from the non-smoking area of a restaurant to the restrooms so a patron from the non-smoking area of the restaurant may have to travel through the smoking area to get to the restrooms. Restaurant owners and proprietors are encouraged to consider placing restrooms in non-smoking areas or creating smoke-free paths from the non-smoking area to the restrooms.

**Who at VDH can be contacted for additional information?**

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