VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 153

An Act to amend and reenact § 18.2-511.1 of the Code of Virginia, to amend the Code of Virginia by adding in Title 15.2 a chapter numbered 28.2, consisting of articles numbered 1, 2, and 3, containing sections numbered 15.2-2820 through 15.2-2833, and to repeal Chapter 28 (§§ 15.2-2800 through 15.2-2810) of Title 15.2 of the Code of Virginia, relating to the Virginia Indoor Clean Air Act; penalty.

[H 1703]

Approved March 9, 2009

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-511.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 15.2 a chapter numbered 28.2, consisting of articles numbered 1, 2, and 3, containing sections numbered 15.2-2820 through 15.2-2833, as follows:

CHAPTER 28.2.

VIRGINIA INDOOR CLEAN AIR ACT.

Article 1.

General Provisions.

§ 15.2-2820. 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 devoted to the sale and service of alcoholic beverages for consumption on the premises and where the sale or service of food or meals is incidental to the consumption of the alcoholic beverages.

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

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

"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, 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 locality, public conveyance or public vehicle, 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 place where food is prepared for service to the public on or off the premises, or any place where food is served. Examples of such places include but are not limited to lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs, kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and colleges, and kitchen areas of local correctional

facilities subject to standards adopted under § 53.1-68. "Restaurant" shall not include (i) places where packaged or canned foods are manufactured and then distributed to grocery stores or other similar food retailers for sale to the public, (ii) mobile points of service to the general public that are outdoors, or (iii) mobile points of service where such service and consumption occur in a private residence or in any location that is not a public place. "Restaurant" shall include any bar or lounge area that is part of such restaurant.

"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.

§ 15.2-2821. Applicability.

Nothing in this chapter shall be construed to:

1. Permit smoking where it is otherwise prohibited or restricted by other applicable provisions of law; or

2. Regulate smoking in retail tobacco stores, tobacco warehouses, or tobacco manufacturing facilities.

§ 15.2-2822. Authority of law-enforcement officials.

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

§ 15.2-2823. Smoking in public buildings or facilities; exception.

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.

B. The provisions of this chapter shall not apply to office, work, or other areas of the Department of Corrections that are not entered by the general public in the normal course of business or use of the premises.

Article 2.

Statewide Regulation of Smoking.

§ 15.2-2824. Prohibitions on smoking generally; penalty for violation.

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

B. No person shall smoke in any area or place specified in subsection A and any person who continues to smoke in such area or place after having been asked to refrain from smoking shall be subject to a civil penalty of not more than $25.

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

§ 15.2-2825. Smoking in restaurants prohibited; exceptions; posting of signs; penalty for violation.

A. Effective December 1, 2009, smoking shall be prohibited and no person shall smoke in any restaurant in the Commonwealth or in any restroom within such restaurant, except that smoking may be permitted in:

1. 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 of such places or operations include the preparation or storage of food for catering services, pushcart operations, hotdog stands, and other mobile points of service;

2. Any outdoor area of a restaurant, with or without roof covering, at such times when such outdoor area is not enclosed in whole or in part by any screened walls, roll-up doors, windows or other seasonal or temporary enclosures;

3. Any restaurants located on the premises of any manufacturer of tobacco products;

4. Any portion of a restaurant that is used exclusively for private functions, provided such functions are limited to those portions of the restaurant that meet the requirements of subdivision 5;

5. Any portion of a restaurant that is constructed in such a manner that the area where smoking may be permitted is (i) structurally separated from the portion of the restaurant in which smoking is prohibited and to which ingress and egress is through a door and (ii) separately vented to prevent the recirculation of air from such area to the area of the restaurant where smoking is prohibited. At least one public entrance to the restaurant shall be into an area of the restaurant where smoking is prohibited. For the purposes of the preceding sentence, nothing shall be construed to 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 area described in subdivision 2; and

6. Any private club.

B. For the purposes of this section:

"Proprietor" means the owner, lessee or other person who ultimately controls the activities within the restaurant. The term "proprietor" includes corporations, associations, or partnerships as well as individuals.

"Structurally separated" means a stud wall covered with drywall or other building material or other like barrier, which, when completed, extends from the floor to the ceiling, resulting in a physically separated room. Such wall or barrier may include portions that are glass or other gas-impervious building material.

C. No individual who is wait staff or bus staff in a restaurant shall be required by the proprietor to work in any area of the restaurant where smoking may be permitted without the consent of such individual. Nothing in this subsection shall be interpreted to create a cause of action against such proprietor.

D. The proprietor of any restaurant shall:

1. Post signs stating "No Smoking" or containing the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a bar across it, clearly and conspicuously in every restaurant where smoking is prohibited in accordance with this section; and

2. Remove all ashtrays and other smoking paraphernalia from any area in the restaurant where smoking is prohibited in accordance with this section.

E. Any proprietor of a restaurant who fails to comply with the requirements of this section shall be subject to the civil penalty of not more than $25.

F. No person shall smoke in any area of a restaurant in which smoking is prohibited as provided in this section. 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 $25.

G. It shall be an affirmative defense to a complaint brought against a proprietor for a violation of this section that the proprietor or an employee of such proprietor:

1. Posted a "No Smoking" sign as required;

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 to leave the establishment.

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

I. Any local health department or its designee shall, while inspecting a restaurant as otherwise required by law, inspect for compliance with this section.

§ 15.2-2826. Designation of "No-Smoking" areas; smoking prohibited in "No-Smoking" areas; penalty for violation.

A. The proprietor or other person in charge of (i) an educational facility, except any public elementary, intermediate, or secondary school; (ii) a health care facility; (iii) 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, and shoe stores; and (iv) recreational facilities shall designate reasonable no-smoking areas, considering the nature of the use and the size of the building.

B. The proprietor or other person in charge of a space subject to the provisions of this section shall post signs conspicuous to public view stating "Smoking Permitted" or "No Smoking." Any person failing to post such signs shall be subject to a civil penalty of not more than $25.

C. 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 shall be subject to a civil penalty of not more than $25.

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

§ 15.2-2827. Responsibility of building proprietors and managers.

Except as provided in § 15.2-2825, proprietors or persons who manage or otherwise control any building, structure, space, place, or area governed by this chapter in which smoking is not otherwise prohibited may designate rooms or areas in which smoking is permitted as follows:

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

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

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

Article 3.
Local Regulation of Smoking.

§ 15.2-2828. Ordinances regulating smoking generally.

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

B. Except as provided in § 15.2-2829, no ordinances adopted after January 1, 1990, shall contain provisions or standards that exceed those established in this chapter.

C. 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 ordinance adopted pursuant to this subsection shall affect no-smoking policies established by employers prior to the adoption of such ordinance.

§ 15.2-2829. Mandatory provisions of ordinances.

If an ordinance is enacted by a locality in accordance with this chapter, it shall provide that it is unlawful for any person to smoke in any of the following places:

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

2. School buses and public conveyances; and

3. Any of the places governed by § 15.2-2824 or 15.2-2825.

§ 15.2-2830. Optional provisions of ordinances.

If an ordinance is enacted by a locality in accordance with this chapter, it may provide that management shall designate reasonable no-smoking areas, considering the nature of the use and the size of the building, in the following places:

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

2. Educational facilities, except as provided in § 15.2-2824;

3. Health care facilities;

4. Rooms in which a public meeting or hearing is being held;

5. Places of entertainment and cultural facilities, including but not limited to theaters, concert halls, gymnasiums, auditoriums, other enclosed arenas, art galleries, libraries, and museums;

6. Indoor facilities used for recreational purposes; or

7. Other public places.

§ 15.2-2831. Other ordinances not authorized.

The provisions of §§ 15.2-2828, 15.2-2829, and 15.2-2830 shall not be construed to allow local regulation of smoking in:

1. Conference or meeting rooms and public or private assembly rooms while such rooms are being used for private functions;

2. Private work places;

3. 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; or

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

§ 15.2-2832. Regulation of smoking; posting of signs.

Any person who owns, manages, or otherwise controls any building or area 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.

§ 15.2-2833. Enforcement of ordinances.

A. Any ordinance may provide a civil penalty of not more than $25 for violations of any provision of such ordinance.

B. Any ordinance may provide that no person shall smoke in a 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 $25.

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

D. Any civil penalties assessed under this section shall be paid into the treasury of the locality where the offense occurred and shall be expended solely for public health purposes.

§ 18.2-511.1. Smoking in proximity to a medical oxygen source in a health care facility; penalty.

Any person who smokes or uses an open flame within 25 feet of a medical oxygen source in a

health care facility, as defined in ~~§ 15.2-2800~~ *§ 15.2-2820*, when the area is posted as an area where smoking and open flame are prohibited is guilty of a Class 2 misdemeanor.

2. That Chapter 28 (§§ 15.2-2800 through 15.2-2810) of Title 15.2 of the Code of Virginia is repealed.

3. That the provisions of this act shall become effective on December 1, 2009.