

HB 2422 Smoking; prohibited in restaurants, penalty.
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another bill?

Summary as introduced:

Restaurants; smoking prohibited; penalties. Prohibits smoking in restaurants in the Commonwealth unless a restaurant posts signs stating "Smoking Permitted" conspicuous to ordinary public view at each public entrance. Any person who continues to smoke in any prohibited area after having been asked to refrain from smoking shall be subject to a civil penalty of not more than \$250 for the first offense, and \$500 for a second offense; any subsequent offense shall be punishable as a Class 2 misdemeanor. Any proprietor of any restaurant who fails to comply with these restrictions shall be subject to a civil penalty of not more than \$500 for the first offense and \$1000 for a second offense; any subsequent offense shall be punishable as a Class 1 misdemeanor.

Full text:

01/09/07 House: Prefiled and ordered printed; offered 01/10/07 075132308 (impact statement)
 03/12/07 House: Bill text as passed House and Senate (HB2422ER) (impact statement)

Amendments:

Senate amendments
 Senate amendments rejected
 Governor's recommendation
 Governor's veto explanation

Status:

01/09/07 House: Prefiled and ordered printed; offered 01/10/07 075132308
 01/09/07 House: Referred to Committee on General Laws
 01/12/07 House: Assigned GL sub: #3 ABC/Gaming (Gear)
 01/30/07 House: Reported from General Laws (16-Y 6-N)
 01/31/07 House: Read first time
 02/01/07 House: Read second time
 02/01/07 House: Pending question ordered
 02/01/07 House: Engrossed by House
 02/02/07 House: Read third time and passed House (74-Y 22-N)
 02/02/07 House: VOTE: PASSAGE (74-Y 22-N)
 02/02/07 House: Communicated to Senate
 02/05/07 Senate: Constitutional reading dispensed
 02/05/07 Senate: Referred to Committee on Education and Health
 02/15/07 Senate: Reported from Education and Health with amendment (11-Y 3-N 1-A)
 02/16/07 Senate: Constitutional reading dispensed (39-Y 0-N)
 02/16/07 Senate: VOTE: (39-Y 0-N)
 02/19/07 Senate: Passed by for the day
 02/20/07 Senate: Read third time
 02/20/07 Senate: Passed by for the day
 02/21/07 Senate: Read third time
 02/21/07 Senate: Passed by for the day
 02/22/07 Senate: Read third time
 02/22/07 Senate: Reading of amendment waived
 02/22/07 Senate: Committee amendment rejected
 02/22/07 Senate: Amendments by Senator Bell withdrawn
 02/22/07 Senate: Passed Senate (23-Y 17-N)
 02/22/07 Senate: VOTE: (23-Y 17-N)

03/12/07 House: Enrolled
03/12/07 House: Bill text as passed House and Senate (HB2422ER)
03/12/07 Senate: Signed by President
03/13/07 House: Signed by Speaker
03/26/07 House: Governor's recommendation received by House
04/03/07 House: Placed on Calendar
04/04/07 House: Pending question ordered
04/04/07 House: House rejected Governor's recommendation (40-Y 59-N)
04/04/07 House: VOTE: ADOPTION (40-Y 59-N)
04/04/07 House: Communicated to Governor
04/10/07 Governor: Vetoed by Governor

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 15.2-2800, 15.2-2801, 15.2-2804, 15.2-2805, 15.2-2806, and 35.1-1 of*
 3 *the Code of Virginia, to amend the Code of Virginia by adding in Title 35.1 a chapter numbered 3.1,*
 4 *consisting of sections numbered 35.1-24.1 through 35.1-24.3, relating to smoking in restaurants; civil*
 5 *penalties.*

6 [H 2422]

7 Approved

8 **Be it enacted by the General Assembly of Virginia:**

9 **1. That §§ 15.2-2800, 15.2-2801, 15.2-2804, 15.2-2805, 15.2-2806, and 35.1-1 of the Code of Virginia**
 10 **are amended and reenacted, and that the Code of Virginia is amended by adding in Title 35.1 a**
 11 **chapter numbered 3.1, consisting of sections numbered 35.1-24.1 through 35.1-24.3, as follows:**

12 § 15.2-2800. Definitions.

13 As used in this chapter unless the context requires a different meaning:

14 "Bar or lounge area" means any establishment or portion of an establishment where one can consume
 15 alcoholic beverages and hors d'oeuvres, but excluding any such establishment or portion of the
 16 establishment having tables or seating facilities where, in consideration of payment, meals are served.

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

20 "Health care facility" means any institution, place, building, or agency required to be licensed under
 21 Virginia law, including, but not limited to, any hospital, nursing facility or nursing home, boarding
 22 home, assisted living facility, supervised living facility, or ambulatory medical and surgical center.

23 "Private work place" means any office or work area that is not open to the public in the normal
 24 course of business except by individual invitation.

25 "Proprietor" means the owner or lessee of the public place, who ultimately controls the activities
 26 within the public place. The term "proprietor" includes corporations, associations, or partnerships as well
 27 as individuals.

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

31 "Public place" means any enclosed, indoor area used by the general public, including, but not limited
 32 to, any building owned or leased by the Commonwealth or any agency thereof or any locality, public
 33 conveyance or public vehicle, restaurant, educational facility, hospital, nursing facility or nursing home,
 34 other health care facility, library, retail store of 15,000 square feet or more, auditorium, arena, theater,
 35 museum, concert hall, or other area used for a performance or an exhibit of the arts or sciences, or any
 36 meeting room.

37 "Recreational facility" means any enclosed, indoor area used by the general public and used as a
 38 stadium, arena, skating rink, video game facility, or senior citizen recreational facility.

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

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

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

48 § 15.2-2801. Statewide regulation of smoking.

49 A. The Commonwealth or any agency thereof and every locality shall provide reasonable no-smoking
 50 areas, considering the nature of the use and the size of the building, in any building owned or leased by
 51 the Commonwealth or any agency thereof or a locality. The provisions of this chapter shall not apply to
 52 office, work or other areas of the Department of Corrections which are not entered by the general public
 53 in the normal course of business or use of the premises.

54 B. Smoking shall be prohibited in (i) elevators, regardless of capacity, except in any open material
 55 hoist elevator, not intended for use by the public; (ii) public school buses; (iii) the interior of any public
 56 elementary, intermediate, and secondary school; (iv) hospital emergency rooms; (v) local or district

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57 health departments; (vi) polling rooms; (vii) indoor service lines and cashier lines; (viii) public restrooms
 58 in any building owned or leased by the Commonwealth or any agency thereof; (ix) the interior of a
 59 child day center licensed pursuant to § 63.2-1701 that is not also used for residential purposes; however,
 60 this prohibition shall not apply to any area of a building not utilized by a child day center, unless
 61 otherwise prohibited by this chapter; and (x) public restrooms of health care facilities.

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

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

72 E D. The proprietor or other person in charge of a space subject to the provisions of this chapter
 73 shall post signs conspicuous to public view stating "Smoking Permitted" or "No Smoking," and in
 74 restaurants, signs conspicuous to ordinary public view at or near each public entrance stating
 75 "No Smoking Section Available." Any person failing to post such signs may be subject to a civil penalty
 76 of not more than twenty-five dollars.

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

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

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

83 § 15.2-2804. Mandatory provisions of ordinances.

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

- 86 1. Elevators, regardless of capacity;
- 87 2. The interior of any public elementary, intermediate, and secondary school;
- 88 3. Common areas in an educational facility, including, but not limited to, classrooms, hallways,
 89 auditoriums, and public meeting rooms;
- 90 4. Any part of a ~~restaurant~~ educational facility, health care facility, recreational facility, or retail
 91 establishment designated a "no-smoking" area pursuant to the provisions of this chapter;
- 92 5. Indoor service lines and cashier areas; and
- 93 6. School buses and public conveyances.

94 § 15.2-2805. Optional provisions of ordinances.

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

- 97 1. Retail and service establishments of 15,000 square feet or more serving the general public,
 98 including, but not limited to, department stores, grocery stores, drug stores, clothing stores, and shoe
 99 stores;
- 100 2. Rooms in which a public meeting or hearing is being held;
- 101 3. Places of entertainment and cultural facilities, including, but not limited to, theaters, concert halls,
 102 gymnasiums, auditoriums, other enclosed arenas, art galleries, libraries, and museums;
- 103 4. Indoor facilities used for recreational purposes; and
- 104 5. Other public places; and

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

110 § 15.2-2806. Exceptions.

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

- 113 1. Bars and lounge areas;
- 114 2. Retail tobacco stores;
- 115 3. Restaurants, conference rooms, or meeting rooms, and public and private assembly rooms
 116 while these places are being used for private functions;
- 117 4. Office or work areas which are not entered by the general public in the normal course of

118 business or use of the premises;

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

122 § 5. Lobby areas of hotels, motels, and other establishments open to the public for overnight
123 accommodation.

124 § 35.1-1. Definitions.

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

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

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

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

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

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

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

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

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

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

150 a. Any place where food is prepared for service to the public on or off the premises, or any place
151 where food is served. Examples of such places include but are not limited to lunchrooms, short order
152 places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private
153 clubs, kitchen facilities of hospitals and nursing homes, dining accommodations of public and private
154 schools and colleges, and kitchen areas of local correctional facilities subject to standards adopted under
155 § 53.1-68. Excluded from the definition are places manufacturing packaged or canned foods which are
156 distributed to grocery stores or other similar food retailers for sale to the public.

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

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

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

174 CHAPTER 3.1.

175 SMOKING IN RESTAURANTS.

176 § 35.1-24.1. Smoking prohibited.

177 In order to reduce the exposure to environmental tobacco smoke, smoking shall not be permitted and
178 no person shall smoke in any restaurant in the Commonwealth.

179 § 35.1-24.2. *Exceptions.*

180 A. Any restaurant may allow smoking if signs stating "Smoking Permitted" conspicuous to ordinary
181 public view are placed at each public entrance.

182 B. The provisions of this chapter shall not apply to restaurants as defined in subsection 9(b) of
183 § 35.1-1.

184 § 35.1-24.3. *Penalties.*

185 A. No person shall smoke in any area in which smoking is prohibited pursuant to this chapter. Any
186 person who continues to smoke in such area after having been asked to refrain from smoking shall be
187 subject to a civil penalty of not more than \$250. Any person who commits a second offense shall be
188 subject to a civil penalty of not more than \$500. Any subsequent offense shall be punishable as a Class
189 2 misdemeanor.

190 B. Any proprietor of any restaurant who fails to comply with the restrictions provided in this chapter
191 shall be subject to a civil penalty of not more than \$500 for the first offense and \$1000 for a second
192 offense. Any subsequent offense shall be punishable as a Class 1 misdemeanor.

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