

A BILL 5

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA 7

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To amend the Department of Health Functions Clarification Act of 2001 to require the 11
Department of Health to conduct inspections of all places of employment and 12
enclosed public places in the District of Columbia to ensure the absence of 13
smoking, to define the conditions and penalties for a violation of this requirement, 14
and to provide for employee rights and protections. 15

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, 16

That this act may be cited as the "Department of Health Functions Clarification 17

Amendment Act of 2005". 18

Sec. 2. The Department of Health Functions Clarification Act of 2001, effective 19
October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 7-731 et. seq.), is amended as 20
follows: 21

(a) Designate the existing text as Part A. General powers, fees, and funds. 22

(b) Add a new Part B to read as follows: 23

“Part B. Inspections, Penalties, Waiver, and Employee Rights 24

“Sec. 4915. Definitions 25

“For the purposes of Part B: 26

“(1) “Cigar bar” means a restaurant or tavern that generates 10% or more of its total annual revenue from the on-site sale of tobacco products, excluding sales from vending machines, and the rental of on-site humidors.

“(2) “Enclosed area” means all the space between a floor and ceiling that is enclosed on all sides by solid walls or windows or doors, exclusive of doorways, that extend from the floor to the ceiling.

“(3) “Place of employment” means an area under the control of a public or private employer that employees normally frequent during the course of employment, including work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, and vehicles owned by a private employer, if that the vehicle is used by more than one person, and excludes a private residence, unless it is used as a child care, adult day care, or health care facility.

“(4) “Public place” means an enclosed area to which the public is invited or in which the public is permitted, including banks, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, nightclubs, retail service establishments, retail stores, shopping malls, sports arenas, taverns, theaters, and waiting rooms, and excludes a private residence, unless it is used as a child care, adult day care, or health care facility.

“(5) “Smoking” means the burning of a lighted cigar, cigarette, pipe, or any other matter or substance that contains tobacco.

“Sec. 4916. Inspections.

The Department of Health shall conduct inspections of all places of employment and public places to ensure that the activity of smoking is hereby prohibited, except that:

“(1) Between the enactment of the Department of Health Functions Clarification Amendment Act of 2005 and January 1, 2007, the smoking prohibition set forth in this section shall not apply to a brew pub, club, nightclub, or tavern as those entities are defined in D.C. Official Code § 25-101 or the bar and bar area of a restaurant. This exception shall not apply to an indoor restaurant table as defined in D.C. Official Code § 25-101.

“(2) After January 1, 2007, the exception described in subsection (a)(1) of this section shall expire and smoking shall be prohibited in all places of employment and public places at all times.

“(3) The places described in this act shall be required to post signs pursuant to section 5 of the District of Columbia Smoking Restriction Act of 1979, effective July 12, 1979 (D.C. Law 3-22; D.C. Official Code § 7-1704), ("1979 act"), and in accordance with regulations issued pursuant to the 1979 act or any other District law.

“Sec. 4917. Exemptions.

“The following places shall be exempt from the provisions of this part:

“(1) Provided that it does not share space with any other establishment, a retail store utilized primarily for the sale of tobacco products and accessories in which the total annual revenue generated by the sale of non-tobacco products or accessories is no greater than 25% of the total revenue of the establishment;

“(2) A cigar bar;

“(3) An outdoor area of a restaurant, tavern, club, or brew pub;

“(4) A hotel room or motel room rented to one or more guests; and 1
“(5) A medical treatment, research, or nonprofit institution where the 2
activity of smoking is conducted for the purpose of medical research or is an integral part 3
of a smoking cessation program. 4

“Sec. 4918. Penalties. 5

“Any employer or person who willfully violates the requirements of this act by: 6

“(1) Smoking in a prohibited area shall be subject to a fine of not less than 7
\$100 nor more than \$1,000; subsequent offenses shall be subject to a fine of not less than 8
\$200 nor more than \$1,000; 9

“(2) Obscuring, removing, defacing, mutilating or destroying any sign 10
posted in accordance with the provisions of this act shall be subject to a fine of \$500; or 11

“(3) Failing to post or maintain warning signs describing the prohibited 12
activity, and failing to notify a person observed to be smoking to stop the activity, as 13
required by this subsection, shall be subject a fine of \$500; each day that the violation 14
continues shall constitute a separate offense. 15

“Sec. 4919. Economic hardship waiver. 16

“(a) The Mayor may grant an economic hardship waiver from the requirements of 17
this part provided that prior to the granting of a waiver, the applicant establishes, to the 18
satisfaction of the Mayor, that compliance with the requirements of this part has caused 19
or will cause undue financial hardship. 20

“(b) Notwithstanding any other provision of law, places of employment and enclosed public places where smoking is permitted, pursuant to subsection (a) of this section, shall:

“(1) Have been in existence on or before January 1, 2007;

“(2) Not permit smoking in an area that exceeds 25% of the total area, if the place of employment or public place is a restaurant as defined in D.C. Official Code § 25-101; and

“(3) Be subject to conditions or restrictions as may be necessary to minimize the adverse effects of smoking and shall be consistent with the general purpose of the Department of Health Functions Amendment Act of 2005.

“Sec. 4920. Employee rights and protections.

“(a) Places of employment and enclosed public places that permit smoking pursuant to this act shall not require employees to work in smoking areas provided that an employee requests to work solely in non-smoking areas.

“(1) Any employee who is aggrieved by a violation of this subsection shall have a private cause of action against the owner, manager, or person in charge of the place of employment or public place.

“(2) An employee shall pursue and exhaust all remedies available pursuant to any collective bargaining agreement, grievance procedure, or other established means of resolving employer-employee disputes, to resolve a violation of this subsection, prior to commencing a civil action.

“(b) An owner, manager, or other person responsible for a place of employment or public place that permits smoking under this part shall not:

“(1) Require an employee to work in a smoking area provided the employee requests to work in the non-smoking area only;

“(2) Discharge or otherwise discriminate against any employee with respect to compensation or any other term, condition, or privilege of employment on the basis that the employee or applicant requested to work in a non-smoking area; and

“(3) Discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this act or reports a violation of this act.

“(c) An employee who is aggrieved by a violation of this section shall be entitled to recover damages, including lost or back wages or salary. The court, in its discretion, may allow the prevailing party a reasonable attorney’s fee as part of the costs.

“Sec. 4921. Rulemaking.

“The Mayor is authorized to promulgate regulations necessary to implement this act.”.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto 1
by the Mayor, action by the Council to override the veto), a 30-day period of 2
Congressional review as provided in section 602(c)(1) of the District of Columbia Home 3
Rule Act, approved December 24, 1973 (87 Stat. 813 D.C. Official Code § 1- 4
206.02(c)(1)), and publication in the District of Columbia Register. 5