

Councilmember Carol Schwartz

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Carol Schwartz introduced the following bill, which was referred to the Committee on \_\_\_\_\_.

To amend the District of Columbia Smoking Restriction Act of 1979 to permit tobacco smoking in a restaurant, tavern, or nightclub or hotel restaurant, tavern, or nightclub provided that it is equipped with a high performance ventilation system and is registered as a smoking establishment pursuant to this act, to increase the basic business license fee for such a smoking establishment, to provide a tax incentive for an establishment to choose to become smoke-free, to require the Department of Health to make periodic inspections to ensure compliance with this act, to establish a fine and penalty for noncompliance with the act by businesses, to increase the penalty for noncompliance with the act by individuals, to provide that the fee increase amounts, penalty amounts, and tax reimbursements be deposited into a dedicated account within the General Fund to be used to pay administrative costs associated with this act, to reimburse the General Fund tax revenue not collected under the tax incentive provision, to provide that any net proceeds remaining after the permitted costs and reimbursements to the General Fund have been met be used for smoking education or prevention or other health-related education purposes, to require the Mayor to submit an annual evaluation report, and to provide a delayed applicability date to provide a transition period for restaurants, nightclubs, and taverns to comply with this act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Smoke-Free Restaurant, Tavern, and Nightclub Incentive Amendment Act of 2005".

Sec. 2. The District of Columbia Smoking Restriction Act of 1979, effective September 28, 1979 (D.C. Law 3-22; D.C. Official Code § 7-1701 *et seq.*), is amended as follows:

(a) Section 3 (D.C. Official Code § 7-1702) is amended by adding a new subsection (h)

to read as follows:

“(h) "Tavern" or "Nightclub" means a space in a building, and the adjoining space outside of the building, regularly used and kept open as a place that serves food and alcoholic beverages and may provide music and facilities for dancing.”.

(b) Section 4(g) (D.C. Official Code § 7-1703(7)) is amended to read as follows:

"(g) Within 180 days of the effective date of the Smoke-Free Restaurant, Tavern, and Nightclub Incentive Amendment Act of 2005, a restaurant, tavern, or nightclub and a restaurant, tavern, or nightclub on a hotel premises, including, at all times, any bar or lounge seating in a restaurant or a restaurant in a hotel, even if, after a certain hour, food is no longer served.

(c) Section 4a (D.C. Official Code § 7-1703.01) is repealed.

(d) Add new sections 4c and 4d to read as follows:

"Sec. 4c. Registered smoking establishments; criteria, licensing.

"(a) Smoking shall be permitted in a restaurant, tavern, or nightclub or restaurant, tavern, or nightclub on a hotel premises provided that it:

"(1) Is registered with the District as a smoking establishment;

"(2) Does not permit smoking in a nonsmoking area, if any;

"(3) Does not serve a person who refuses to refrain from smoking in a nonsmoking area;

"(4) Has a high-performance ventilation system that meets or exceeds the standards set forth in subsection (d) of this section;

"(5) Has a current basic business license in accordance with District law and regulation and subsection (e) of this section; and

"(6) Posts no-smoking signs as required by section 5 or regulations issued pursuant to this act. 1 2

"(b)(1) No area shall be designated as a smoking area where smoking is prohibited by the Fire Marshall or by other District of Columbia laws or rules. 3 4

"(2) Smoking areas shall comply with all laws and rules of the District of Columbia. 5 6

"(c)(1) Within 180 days of the effective date of the Smoke-Free Restaurant, Tavern, and Nightclub Incentive Amendment Act of 2005, a restaurant, tavern, or nightclub and a restaurant, tavern, or nightclub on a hotel premises shall be registered with the District as a: 7 8 9

"(A) Smoke-free establishment and in compliance with this act; or 10

"(B) Smoking establishment and in compliance with this act. 11

"(2) A restaurant, tavern, or nightclub or restaurant, tavern, or nightclub on a hotel premises failing to register pursuant to paragraph (1) of this subsection shall be deemed to be a smoke-free establishment and subject to the requirements of this act and regulations promulgated pursuant to this act. 12 13 14 15

"(d) A ventilation system that meets the requirements of this act shall include: 16

"(1) An electrically powered hospital grade, HEPA media filter that will clean all of the air in the public areas of the establishment by removing from the air every 15 minutes: 17 18 19

"(A) Not less than 95% of three-tenths micron particulates, including dust, smoke, pollen, mold spores, bacteria, tobacco smoke, viruses and allergens; and 20 21

“(B) Not less than 95% of gases, vapors, and volatile organic  
compounds; or

“(2) A high-ventilation-air conditioning system, designed by a licensed  
professional engineer, that meets the requirements of this act and regulations promulgated  
pursuant to this act, and all requirements of the District of Columbia’s building code, and which:

“(A) Provides an air change in the public areas of the establishment  
every 15 minutes; and

“(B) Exhausts the air to the exterior of the building.

"(e) A restaurant, tavern, or nightclub or restaurant, tavern, or nightclub on a hotel  
premises that is a smoking establishment shall be licensed as a smoking establishment and shall  
pay a license fee 4 times the current basic business license fee for a comparable establishment, as  
listed by the Department of Consumer and Regulatory Affairs, that is licensed as a smoke-free  
establishment.

"Sec. 4d. Smoke free incentive.

"(a) A restaurant, tavern, or nightclub or restaurant, tavern, or nightclub on a hotel  
premises that becomes a non-smoking establishment in compliance with this act shall be entitled  
to claim a tax credit or deduction equal to 25% of the sales tax imposed by § 47-2002(3)(A) and  
(B) of the District of Columbia Official Code for 2 years following its designation as a smoke-  
free establishment; except, that an establishment that is smoke-free on or before May 17, 2005  
shall not be entitled to claim a tax credit or deduction pursuant to this subsection.

"(b) A restaurant, tavern, or nightclub or restaurant, tavern, or nightclub on a hotel premises that receives a tax credit or deduction pursuant to subsection (a) of this section that does not remain a smoke-free establishment shall:

"(1) No longer be entitled to a tax credit or deduction; and

"(2) Be required to reimburse the District an amount equal to any tax credits received or deductions taken."

(e) Section 6 (D.C. Official Code 7-1705) is amended as follows:

(1) Subsection (a)(2) is amended by striking the phrase "refrain from smoking." and inserting the phrase "refrain from smoking, and deny service to a person who refuses to refrain from smoking after having been so requested." in its place.

(2) Add a new subsection (b-1) to read as follows:

"(b-1) The Department of Health shall periodically conduct inspections of establishments subject to this act to verify compliance with this act. In the case of smoking establishments, the inspector shall be an experienced ventilation inspector."

(f) Section 7(a) (D.C. Official Code § 7-1706(a)) is amended to read as follows:

"Sec. 7. Penalties.

"(a)(1) A restaurant, tavern, or nightclub or restaurant, tavern, or nightclub on a hotel premises that violates any provision of this act or rules promulgated pursuant this act, other than section 8, shall be subject to the following schedule of penalties, having its business license suspended or revoked, or both:

(A) \$200 for the first offense;

(B) \$500 for the second offense; and

(C) \$1,000 for the third offense and each subsequent offense.

"(2) An individual, including a patron or an employee, who violates any provision of this act or rules promulgated pursuant this act shall, upon conviction, be subject to a fine of \$100."

(g) Section 10(4) (D.C. Official Code § 7-1708(4)) is amended to read as follows:

"(4) A restaurant, tavern, or nightclub or restaurant, tavern, or nightclub on a hotel premises pursuant to section 4c."

(h) Add a new section 11a to read as follows:

"Sec. 11a. Anti-Smoking and Health Education Fund.

"There is established as a special account, the Anti-Smoking and Health Education Fund, into which shall be deposited any fee increase amounts collected pursuant to section 4c(e), penalty amounts assessed pursuant to section 7(a), and tax credit or deduction reimbursements required by section 4d(b). The Anti-Smoking and Health Education Fund shall be a dedicated account within the General Fund, the funds of which shall be allocated, for each fiscal year, in the following order:

"(1) For reasonable administrative costs, up to a maximum of 10%, associated with the Smoke-Free Restaurant, Tavern, and Nightclub Incentive Amendment Act of 2005;

"(2) To reimburse the General Fund, up to 100%, the amount of tax revenue not collected by the District pursuant to section 4d(a); and

"(3) For the Department of Health's Tobacco Control Program or, as directed by the Mayor, other tobacco smoking education and smoking cessation programs established in accordance with section 11, or other health-related program.

(I) Add a new section 13 to read as follows:

"Sec. 13. Program evaluation.

"The Mayor shall review the effectiveness of the Smoke-Free Restaurant, Tavern, and Nightclub Incentive Amendment Act of 2005 and a prepare a comprehensive evaluation for submission to the Council by January 1, 2007, and annually thereafter, to be submitted by January 1 of each year, which shall contain a detailed report on:

"(1) The number of businesses that have chosen to become smoke-free as a result of the act;

"(2) The fee increase amounts collected pursuant to section 4c(e), penalty amounts assessed pursuant to section 7(a), and tax credit or deduction reimbursements required by section 4d(b);

"(3) The amount and percentage of administrative costs associated with the act;

"(4) The expenditures from the Anti-Smoking and Health Education Fund; and

"(5) The overall economic impact of the act, especially on restaurants, taverns, and nightclubs and hotel restaurants, taverns and nightclubs and related sources of revenue such as parking."

Sec. 3. Rulemaking.

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

Sec. 4. 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. 5. Applicability.

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This act shall apply 180 calendar days after the effective date of this act.

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Sec. 6. Effective date.

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

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