

ENGROSSED ORIGINAL

A BILL 1

16-293 2

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA 3

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To amend the Department of Health Functions Clarification Act of 2001 to authorize the 5
Department of Health to conduct inspections of all places of employment and enclosed 6
public places in the District of Columbia to ensure the absence of smoking, to define the 7
conditions and penalties for a violation of this requirement, and to provide for employee 8
rights and protections. 9

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this 10
act may be cited as the "Department of Health Functions Clarification Amendment Act of 2005". 11

Sec. 2. The Department of Health Functions Clarification Act of 2001, effective October 12
3, 2001 (D.C. Law 14-28; D.C. Official Code § 7-731 et. seq.), is amended as follows: 13

(a) Designate the existing text as Part A. General powers, fees, and funds. 14

(b) Add a new Part B to read as follows: 15

“Part B. Inspections, Penalties, Waiver, and Employee Rights 16

“Sec. 4915. Definitions 17

“For the purposes of Part B: 18

“(1) “Cigar bar” means a restaurant or tavern that generates 10% or more of its 19
total annual revenue from the on-site sale of tobacco products, excluding sales from vending 20
machines, and the rental of on-site humidors. 21

“(2) “Enclosed area” means all the space between a floor and ceiling that is 22

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enclosed on all sides by solid walls or windows or doors, exclusive of doorways, that extend 1
from the floor to the ceiling. 2

“(3) “Place of employment” means an enclosed area under the control of a public 3
or private employer that employees normally frequent during the course of employment, 4
including work areas, employee lounges, restrooms, conference rooms, classrooms, employee 5
cafeterias, hallways, and vehicles owned by a private employer, if that the vehicle is used by 6
more than one person, and excludes a private residence, unless it is used as a child care, adult 7
day care, or health care facility. 8

“(4) “Public place” means an enclosed area to which the public is invited or in 9
which the public is permitted, including banks, educational facilities, health care facilities, 10
laundromats, public transportation facilities, reception areas, restaurants, retail food production 11
and marketing establishments, nightclubs, retail service establishments, retail stores, shopping 12
malls, sports arenas, taverns, theaters, and waiting rooms, and excludes a private residence, 13
unless it is used as a child care, adult day care, or health care facility. 14

“(5) “Smoking” means the burning of a lighted cigar, cigarette, pipe, or any other 15
matter or substance that contains tobacco. 16

“Sec. 4916. Inspections. 17

The Department of Health is authorized to conduct inspections of all places of 18
employment and public places to ensure that the activity of smoking is hereby prohibited, except 19
that: 20

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“(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~~ brew pub, or

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nighbclub; 1

“(4) A hotel room or motel room rented to one or more guests; and 2

“(5) A medical treatment, research, or nonprofit institution where the activity of 3
smoking is conducted for the purpose of medical research or is an integral part of a smoking 4
cessation program; and 5

“(6) Theatrical productions. 6

“Sec. 4918. Penalties. 7

“Any employer or person who willfully violates the requirements of this act by: 8

“(1) Smoking in a prohibited area shall be subject to a fine of not less than \$100 9
nor more than \$1,000; subsequent offenses shall be subject to a fine of not less than \$200 nor 10
more than \$1,000; 11

“(2) Obscuring, removing, defacing, mutilating or destroying any sign posted in 12
accordance with the provisions of this act shall be subject to a fine of \$500; or 13

“(3) Failing to post or maintain warning signs describing the prohibited activity, 14
and failing to notify a person observed to be smoking to stop the activity, as required by this 15
subsection, shall be subject a fine of \$500; each day that the violation continues shall constitute 16
a separate offense. 17

“Sec. 4919. Economic hardship waiver. 18

“(a) The Mayor may grant an economic hardship waiver from the requirements of this 19

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part provided that prior to the granting of a waiver, the applicant establishes, to the satisfaction 1
of the Mayor, that compliance with the requirements of this part has caused or will cause undue 2
financial hardship. 3

“(b) Notwithstanding any other provision of law, places of employment and enclosed 4
public places where smoking is permitted, pursuant to subsection (a) of this section, shall: 5

“(1) Have been in existence on or before January 1, 2007; 6

“(2) Not permit smoking in an area that exceeds 25% of the total area, if the 7
place of employment or public place is a restaurant as defined in D.C. Official Code § 25-101; 8
and 9

“(3) Be subject to conditions or restrictions as may be necessary to minimize the 10
adverse effects of smoking and shall be consistent with the general purpose of the Department of 11
Health Functions Amendment Act of 2005. 12

“Sec. 4920. Employee rights and protections. 13

“(a) Places of employment and enclosed public places that permit smoking pursuant to 14
this act shall not require employees to work in smoking areas provided that an employee requests 15
to work solely in non-smoking areas. 16

“(1) Any employee who is aggrieved by a violation of this subsection shall have 17
a private cause of action against the owner, manager, or person in charge of the place of 18
employment or public place. 19

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“(2) An employee shall pursue and exhaust all remedies available pursuant to any 1
collective bargaining agreement, grievance procedure, or other established means of resolving 2
employer-employee disputes, to resolve a violation of this subsection, prior to commencing a 3
civil action. 4

“(b) An owner, manager, or other person responsible for a place of employment or 5
public place that permits smoking under this part shall not: 6

“(1) Require an employee to work in a smoking area provided the employee 7
requests to work in the non-smoking area only; 8

“(2) Discharge or otherwise discriminate against any employee with respect to 9
compensation or any other term, condition, or privilege of employment on the basis that the 10
employee or applicant requested to work in a non-smoking area; and 11

“(3) Discharge, refuse to hire, or in any manner retaliate against an employee, 12
applicant for employment, or customer because that employee, applicant, or customer exercises 13
any rights afforded by this act or reports a violation of this act. 14

“(c) An employee who is aggrieved by a violation of this section shall be entitled to 15
recover damages, including lost or back wages or salary. The court, in its discretion, may allow 16
the prevailing party a reasonable attorney’s fee as part of the costs. 17

“Sec. 4921. Rulemaking. 18

“The Mayor is authorized to promulgate regulations necessary to implement this act.”. 19

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Sec. 3. Fiscal impact statement.

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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)).

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Sec. 4. 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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