

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Department of Health Functions Clarification Amendment Act of 2006".

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

- (a) Designate the existing text as Part A. General powers, fees, and funds.
- (b) Add a new Part B to read as follows:

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

“Sec. 4915. Definitions.

“For the purposes of this part, the term:

“(1) “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.

“(2) “Place of employment” means an enclosed 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 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.

“(3) “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.

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

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

“Sec. 4916. Smoking prohibitions; inspections.

The Department of Health is authorized to conduct inspections of all places of employment and public places to ensure that the activity of smoking in such places, which is hereby prohibited, is not taking place, except that:

“(1) Between the enactment of the Department of Health Functions Clarification Amendment Act of 2005, passed on 2nd reading on January 4, 2006 (Enrolled version of Bill 16-293), 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 of a restaurant, as defined in D.C. Official Code § 25-101.

“(2) After January 1, 2007, the exception described in paragraph (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) A retail store that is used 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; provided, that it does not share space with any other establishment;

“(2) A tobacco bar;

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

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

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

“(6) Theatrical productions.

“Sec. 4918. Penalties.

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

“(1) Smoking in a prohibited area shall be subject to a fine of not less than \$100

or more than \$1,000; subsequent offenses shall be subject to a fine of not less than \$200 or more than \$1,000;

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

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

“Sec. 4919. Economic hardship waiver.

“(a) The Mayor may grant an economic hardship waiver from the requirements of this part; provided, that prior to the granting of a waiver, the applicant establishes, to the satisfaction of the Mayor, that compliance with the requirements of this part has caused or will cause undue financial hardship. An economic hardship waiver shall be based on regulations issued in accordance with section 4921.

“(b) Notwithstanding any other provision of law, places of employment and 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 part B of this act.

“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) An 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; or

“(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 rules necessary to implement this act. Any proposed regulations issued pursuant to this act shall be submitted to the Council for a 60-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed regulations, in whole or in part, by resolution within this 60-day review period, the proposed rules shall be deemed approved.”.

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 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.

Chairman
Council of the District of Columbia

Mayor
District of Columbia