

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 7.
HUMAN HEALTH CARE AND SAFETY.

CHAPTER 7A.
FUNCTIONS OF THE DEPARTMENT OF HEALTH.

2001 Edition

DISTRICT OF COLUMBIA OFFICIAL CODE
CHAPTER 7A. FUNCTIONS OF THE DEPARTMENT
OF HEALTH.

TABLE OF CONTENTS

Subchapter I. General Powers, Fees, and Funds.

- § 7-731. Exclusive agency powers.
- § 7-732. Regulatory Enforcement Fund.[Repealed]
- § 7-733. Health Occupations Regulation Fund.
- § 7-733.01. Deposit of fees.
- § 7-733.02. Board of Pharmacy Fund.
- § 7-734. Public Health Laboratory fees.
- § 7-735. Public Health Laboratory Fund.[Repealed]
- § 7-736. Disbursements from the Laboratory Fund.[Repealed]
- § 7-736.01. Grant authority.
- § 7-737. Rules.

Subchapter II. Inspections, Penalties, Waiver, and Employee Rights.

- § 7-741. Definitions.
- § 7-742. Smoking prohibitions; inspections.
- § 7-743. Exemptions.
- § 7-744. Penalties.
- § 7-745. Economic hardship waiver.
- § 7-746. Employee rights and protections.
- § 7-747. Rulemaking.

CHAPTER 7A. FUNCTIONS OF THE DEPARTMENT OF HEALTH.

SUBCHAPTER I. GENERAL POWERS, FEES, AND FUNDS.

§ 7-731. EXCLUSIVE AGENCY POWERS.

(a) Notwithstanding the licensing powers and responsibilities given to other District of Columbia agencies and officials in subchapters I-A and I-B of Chapter 28 of Title 47 of the District of Columbia Official Code, the Department of Health, as established by Reorganization Plan No. 4 of 1996, effective July 17, 1996 (part A of subchapter XIV of Chapter 15 of Title 1), shall be the exclusive agency to:

- (1) Regulate allied health care professionals and social service professionals;
- (2) Regulate occupational and professional conduct and standards for health care and social service professionals, including investigating, licensing, and enforcing applicable laws and regulations;
- (3) Regulate actions that affect the physical environment and ensure compliance with applicable federal and District laws and rules that govern the uses and practices that affect the physical environment, including air resources management, water resources management, stormwater management, soil resources management, hazardous waste, pesticides, lead poison program implementation, asbestos program management, underground storage tank regulation, aquatic and wildlife resources management, medical waste management, low-level radioactive waste control, and toxic chemical control;
- (4) Regulate health care facilities and social service facilities;
- (5) Regulate food service establishments, including, but not limited to, retailers and wholesalers of food and food products, grocery stores, restaurants, food vendors, dairies, patent medicine outlets, ice cream manufacturers, candy manufacturers, bottling establishments, wholesale and retail seafood dealers, delicatessens, and bakeries;
- (6) Regulate pharmacies and pharmacy personnel;
- (7) Determine which drugs and other substances shall be classified as controlled substances, and identify persons and facilities that handle, manage, distribute, dispense, and conduct research with controlled substances;
- (8) Regulate radiological and medical devices;
- (9) Regulate the manufacture, distribution, and dispensing of controlled substances;
- (10) Regulate the operation of barber shops, beauty salons, and body art establishments;
- (11) Regulate swimming pools;
- (12) Regulate massage and health spa establishments;
- (13) Regulate animal disease control and rodent control; and
- (14) Perform any other functions expressly described in Reorganization Plan No. 4 of 1996, as construed in light of all documents formally made a part of Reorganization Plan No. 4 of 1996 pursuant to § 1-315.05.

(a-1)(1) The Department of Health shall conduct a minimum of 3 inspections per year of the environmental conditions at the Central Detention Facility. For the purposes of this subsection, the term "environmental conditions" shall include temperature control, ventilation, and sanitation.

(2) The Department of Health shall submit the report of each inspection conducted pursuant to paragraph (1) of this subsection to the Council and the Mayor within 30 days of the inspection.

(b) For the purpose of this section, the term "regulate" shall include all licensing, certification, investigation,

inspection, permitting, registration, and enforcement functions, including the issuance of civil infractions, except that the Department of Consumer and Regulatory Affairs shall continue to issue licenses for businesses engaged in functions as set forth in subsection (a)(3), (a)(5), (a)(10), (a)(11), and (a)(12) of this section.

(c) The Mayor shall establish fees to implement this section. All fines and fees collected pursuant to this section shall be deposited as nonlapsing funds in the Department of Health Regulatory Enforcement Fund to the credit of the administration within the Department of Health responsible for collecting the fees to support the activities of those programs, except that fines and fees collected pursuant to Chapter 21 of Title 8 shall be deposited in the Rodent Control Fund. After September 30, 2002, fines and fees generated through rodent control activities shall be deposited in the Department of Health Regulatory Enforcement Fund.

(d) Notwithstanding any provision in this section or any other District law, the Mayor may regulate the manufacture, cultivation, distribution, dispensing, possession, and administration of medical marijuana as authorized in Chapter 16B of this title.

(Oct. 3, 2001, D.C. Law 14-28, § 4902, 48 DCR 6981; Jan. 30, 2004, D.C. Law 15-62, § 2, 50 DCR 6574; July 27, 2010, D.C. Law 18-210, § 3(b), 57 DCR 4798; Oct. 23, 2012, D.C. Law 19-193, § 2, 59 DCR 10388.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 15-62 added subsec. (a-1).

D.C. Law 18-210 added subsec. (d).

D.C. Law 19-193, in subsec. (a)(10), substituted ", beauty salons, and body art establishments;" for "and beauty salons;" .

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 3 of Central Detention Facility Monitoring Temporary Amendment Act of 2003 (D.C. Law 15-30, October 4, 2003, law notification 50 DCR 9483).

Emergency Act Amendments

For temporary (90 day) addition of section, see § 2 of Department of Health Functions Clarification Emergency Act of 2001 (D.C. Act 14-60, June 6, 2001, 48 DCR 5701).

For temporary (90 day) addition of section, see § 4402 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 3 of Central Detention Facility Monitoring Emergency Amendment Act of 2003 (D.C. Act 15-76, April 16, 2003, 50 DCR 3637).

For temporary (90 day) amendment of section, see § 3 of Central Detention Facility Monitoring Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-132, July 29, 2003, 50 DCR 6847).

For temporary (90 day) amendment of section, see § 2 of Jail Improvement Emergency Amendment Act of 2003 (D.C. Act 15-188, October 24, 2003, 50 DCR 9495).

For temporary (90 day) addition of sections, see §§ 5013, 5015 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of sections, see §§ 5013, 5015 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19- 413, July 25, 2012, 59 DCR 9290).

Legislative History of Laws

Law 14-28, the "Fiscal Year 2002 Budget Support Act of 2001", was introduced in Council and assigned Bill No. 14-144, which was referred to the Committee Of the Whole. The Bill was adopted on first and second readings on May 1, 2001, and June 5, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned Act No. 14-85 and transmitted to both Houses of Congress for its review. D.C. Law 14-28 became effective on October 3, 2001.

Law 15-62, the "District of Columbia Jail Improvement Amendment Act of 2003", was introduced in Council and assigned Bill No. 15-31, which was referred to Committee on the Judiciary. The Bill was adopted on first and second readings on June 3, 2003, and July 8, 2003, respectively. Signed by the Mayor on July 29, 2003, it was assigned Act No. 15-112 and transmitted to both Houses of Congress for its review. D.C. Law 15-62 became effective on January 30, 2004.

Law 18-210, the "Legalization of Marijuana for Medical Treatment Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-622, which was referred to the Committee on Health and the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 20, 2010, and May 4, 2010, respectively. Signed by the Mayor on May 21, 2010, it was assigned Act No. 18-429 and transmitted to both Houses of Congress for its review. D.C. Law 18-210 became effective on July 27, 2010.

Law 19-193, the "Regulation of Body Artists and Body Art Establishments Act of 2012", was introduced in Council and assigned Bill No. 19-221, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on June 5, 2012, and July 10, 2012, respectively. Signed by the Mayor on August 17, 2012, it was assigned Act No. 19-448 and transmitted to both Houses of Congress for its review. D.C. Law 19- 193 became effective on October 23, 2012.

Delegation of Authority

Delegation of Authority Pursuant to the Department of Health Functions Clarification Act of 2001, see Mayor's Order 2005-81, May 25, 2005 (52 DCR 5510).

Delegation of Authority Pursuant to the Department of Health Functions Clarification Act of 2001 to Regulate Barber Shops, Beauty Salons, and Massage and Spa Establishments, see Mayor's Order 2006-10, January 27, 2006 (53 DCR 2711a).

Delegation of authority pursuant to D.C. Law 14-28, the Department of Health Functions Clarification Act of 2001, see Mayor's Order 2007-63, March 8, 2007 (54 DCR 7789).

Miscellaneous Notes

For Department of Health reporting requirements to Council, see § 5013 of D.C. Law 19-168.

For Deputy Mayor for Health and Human Services reporting requirements to Council, see § 5015 of D.C. Law 19-168.

§ 7-732. REGULATORY ENFORCEMENT FUND.[REPEALED]

(Oct. 3, 2001, D.C. Law 14-28, § 4903, 48 DCR 6981; Oct. 28, 2003, D.C. Law 15-38, § 3(g), 50 DCR 6913; Nov. 13, 2003, D.C. Law 15-39, § 1602, 50 DCR 5668; Mar. 13, 2004, D.C. Law 15-105, § 45, 51 DCR 881; Sept. 14, 2011, D.C. Law 19-21, § 9079, 58 DCR 6226; Sept. 26, 2012, D.C. Law 19-171, § 98(e), 59 DCR 6190.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 19-171 made a technical correction to the enacting clause of D.C. Law 19-21, § 9079 that did not change the repeal of this section.

Emergency Act Amendments

For temporary (90 day) addition of section, see § 3 of Department of Health Functions Clarification Emergency Act of 2001 (D.C. Act 14-60, June 6, 2001, 48 DCR 5701).

For temporary (90 day) addition of section, see § 4403 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 1602 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 3(g) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

For temporary (90 day) amendment of section, see § 1602 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative History of Laws

For Law 14-28, see notes following § 7-219.

Law 15-38, the "Streamlining Regulation Act of 2003", was introduced in Council and assigned Bill No. 15-19, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 3, 2003, and July 8, 2003, respectively. Signed by the Mayor on August 11, 2003, it was assigned Act No. 15-146 and transmitted to both Houses of Congress for its review. D.C. Law 15-38 became effective on October 28, 2003.

Law 15-39, the "Fiscal Year 2004 Budget Support Act of 2003", was introduced in Council and assigned Bill No. 15-218, which was referred to Committee on Whole. The Bill was adopted on first and second readings on May 6, 2003, and June 3, 2003, respectively. Signed by the Mayor on June 20, 2003, it was assigned Act No. 15-106 and transmitted to both Houses of Congress for its review. D.C. Law 15-39 became effective on November 13, 2003.

For Law 15-105, see notes following § 7-136.

Law 19-21, the "Fiscal Year 2012 Budget Support Act of 2011", was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was

assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

For Law 19-171, see notes following § 7-242.

Miscellaneous Notes

Short title of title XVI of Law 15-39: Section 1601 of D.C. Law 15-39 provided that title XVI of the act may be cited as the Department of Health Functions Clarification Amendment Act of 2003.

§ 7-733. HEALTH OCCUPATIONS REGULATION FUND.

(a) There is established as a nonlapsing, revolving fund in the Department of Health the Health Occupations Regulation Fund ("Fund"), to be administered by the Mayor as an agency fund as defined in § 47-373(2)(l), to which all licensing fees, civil fines, and interest relating to the practice of health occupations in the District of Columbia shall be deposited and credited; except, that the Master License Fee collected by the Department of Consumer and Regulatory Affairs for the activities described in § 7-731 shall be deposited into the Master Business License Fund established by § 47-2851.13, to the credit of the Department of Consumer and Regulatory Affairs.

(b) Revenues deposited into the Fund shall not revert to the General Fund at the end of any fiscal year or at any other time, but shall be continually available to the Department of Health for the uses and purposes set forth in subsection (c) of this section, subject to authorization by Congress in an appropriations act.

(c) Subject to the applicable laws relating to the appropriation of District of Columbia funds, monies received by and deposited in the Health Occupations Regulation Fund shall be for the sole use of the boards established pursuant to Chapter 12 of Title 3, and from it shall be paid all salaries and all other expenses necessary in carrying out the duties of the boards. The Mayor shall be responsible for the deposit and expenditure of these monies.

(d) The Mayor shall submit to the Council, as a part of the annual budget, a requested appropriation for expenditures from the Health Occupations Regulation Fund. The Mayor's budget request shall be based on an estimated projection of the expenditures necessary to perform the administrative and regulatory functions of the boards established pursuant to Chapter 12 of Title 3.

(Oct. 3, 2001, D.C. Law 14-28, § 4904, 48 DCR 6981.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 4 of Department of Health Functions Clarification Emergency Act of 2001 (D.C. Act 14-60, June 6, 2001, 48 DCR 5701).

For temporary (90 day) addition of section, see § 4404 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative History of Laws

For Law 14-28, see notes following § 7-219.

§ 7-733.01. DEPOSIT OF FEES.

(a) Beginning with fiscal year 2007, the Mayor shall ensure that all fees and fines received from enforcement and regulation of the activities described in § 7-731 shall be deposited in the Regulatory Enforcement Fund as required by § 7-731(c).

(b) Beginning with fiscal year 2007, the Mayor shall ensure that all licensing fees, civil fines, and interest relating to the practice of health occupations in the District shall be deposited in the Health Occupations Regulations Fund as required by § 7-732.

(Oct. 3, 2001, D.C. Law 14-28, § 4904a, as added Oct. 20, 2005, D.C. Law 16-33, § 5052, 52 DCR 7503.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 5052 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative History of Laws

Law 16-33, the "Fiscal Year 2006 Budget Support Act of 2005", was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was

assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

Miscellaneous Notes

Short title of subtitle F of title V of Law 16-33: Section 5051 of D.C. Law 16-33 provided that subtitle F of title V of the act may be cited as the Department of Health Functions Clarification Amendment Act of 2005.

§ 7-733.02. BOARD OF PHARMACY FUND.

(a)(1) There is established, as a nonlapsing fund in the Department of Health, the Board of Pharmacy Fund ("Fund"), to be administered by the Mayor as an agency fund, as defined in § 47-373(2)(l), into which all licensing fees, civil fines, and interest earned relating to the practice of pharmaceutical detailing, and any other funds, as directed by law, shall be deposited and used for the administration of the Board of Pharmacy.

(2) For the purposes of this subsection, the term "practice of pharmaceutical detailing" shall have the same meaning as provided in § 3-1201.02(11A).

(b) All funds deposited into the Fund shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available to the Department of Health for the uses and purposes set forth in subsection (a) of this section, subject to authorization by Congress.

(Oct. 3, 2001, D.C. Law 14-28, § 4904b, as added Mar. 26, 2008, D.C. Law 17-131, § 103, 55 DCR 1659.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

Law 17-131, the "SafeRx Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-364 which was referred to the Committee on Health. The Bill was adopted on first and second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on February 1, 2008, it was assigned Act No. 17-282 and transmitted to both Houses of Congress for its review. D.C. Law 17-131 became effective on March 26, 2008.

Delegation of Authority

Delegation of Authority pursuant to D.C. Law 17-131, the SafeRX Amendment Act of 2008, see Mayor's Order 2008-83, June 11, 2008 (55 DCR 9360).

§ 7-734. PUBLIC HEALTH LABORATORY FEES.

The Mayor is authorized to establish a schedule of fees for forms and for performing laboratory analysis of biological and environmental samples obtained from humans, animals, or various environmental media for the purpose of identifying environmental contaminants and performing epidemiological surveillance, including for cases of lead poisoning, tuberculosis, rabies, and sexually transmitted diseases. The schedule of fees may account for the provision of bulk services and may distinguish between services provided to individuals and organizations. The schedule of fees may be developed on a sliding scale based on a person's or organization's ability to pay for laboratory analysis, or may be waived in cases of extreme need.

(Oct. 3, 2001, D.C. Law 14-28, § 4905, 48 DCR 6981; Mar. 27, 2003, D.C. Law 14-257, § 2, 50 DCR 244.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 14-257 rewrote the first sentence which had read: "The Mayor is authorized to establish a schedule of fees for performing laboratory analysis of biological and environmental samples obtained from humans, animals, or various environmental media for the purpose of identifying environmental contaminants and performing epidemiological surveillance for cases of lead poisoning, tuberculosis, rabies, and sexually transmitted diseases."

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Public Health Laboratory Fee Temporary Amendment Act of 2002 (D.C. Law 14-208, October 19, 2002, law notification 49 DCR 10464).

Emergency Act Amendments

For temporary (90 day) addition of section, see § 5 of Department of Health Functions Clarification Emergency Act of 2001 (D.C. Act 14-60, June 6, 2001, 48 DCR 5701).

For temporary (90 day) addition of section, see § 4405 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 2 of Public Health Laboratory Fee Emergency Amendment Act of 2002 (D.C. Act 14-390, June 21, 2002, 49 DCR 6083).

For temporary (90 day) amendment of section, see § 2 of Public Health Laboratory Fee Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-479, October 3, 2002, 49 DCR 9579).

Legislative History of Laws

For Law 14-28, see notes following § 7-219.

Law 14-257, the "Public Health Laboratory Fee Amendment Act of 2002", was introduced in Council and assigned Bill No. 14-679, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 7, 2002, and December 3, 2002, respectively. Signed by the Mayor on December 23, 2002, it was assigned Act No. 14-554 and transmitted to both Houses of Congress for its review. D.C. Law 14-257 became effective on March 27, 2003.

§ 7-735. PUBLIC HEALTH LABORATORY FUND.[REPEALED]

(Oct. 3, 2001, D.C. Law 14-28, § 4906, 48 DCR 6981; Sept. 14, 2011, D.C. Law 19-21, § 9078(a), 58 DCR 6226.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 6 of Department of Health Functions Clarification Emergency Act of 2001 (D.C. Act 14-60, June 6, 2001, 48 DCR 5701).

For temporary (90 day) addition of section, see § 4406 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative History of Laws

For Law 14-28, see notes following § 7-219.

For history of Law 19-21, see notes under § 7-731.

§ 7-736. DISBURSEMENTS FROM THE LABORATORY FUND.[REPEALED]

(Oct. 3, 2001, D.C. Law 14-28, § 4907, 48 DCR 6981; Sept. 14, 2011, D.C. Law 19-21, § 9078(b), 58 DCR 6226.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 7 of Department of Health Functions Clarification Emergency Act of 2001 (D.C. Act 14-60, June 6, 2001, 48 DCR 5701).

For temporary (90 day) addition of section, see § 4407 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative History of Laws

For Law 14-28, see notes following § 7-219.

For history of Law 19-21, see notes under § 7-731.

§ 7-736.01. GRANT AUTHORITY.

(a) For fiscal year 2010, the Director of the Department of Health shall have the authority to issue grants to qualified community organizations for the purposes of conducting health promotion, preventing disease, and providing health services; provided, that any grant in excess of \$250,000 shall be awarded through a competitive process unless otherwise authorized under law.

(b) The Department of Health shall submit a quarterly report to the Council on all grants issued pursuant to the authority granted in subsection (a) of this section.

(Oct. 3, 2001, D.C. Law 14-28, § 4907a, as added Mar. 3, 2010, D.C. Law 18-111, § 5011, 57 DCR 181.)

HISTORICAL AND STATUTORY NOTES

Temporary Amendments of Section

Section 2 of D.C. Law 18-304 amended subsec. (a) to read as follows:

"(a) For fiscal years 2011 through 2014, the Director of the Department of Health shall have the authority to issue grants to Unity Health Care, Incorporated, for the purposes of conducting health promotion, preventing disease, and providing health-care services."

; and repealed subsec. (b).

Section 4(b) of D.C. Law 18-304 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) addition, see § 5011 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 5011 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 2 of Department of Health Functions Clarification Emergency Amendment Act of 2010 (D.C. Act 18-601, November 17, 2010, 57 DCR 11037).

For temporary (90 day) amendment of section, see § 2 of Department of Health Functions Clarification Emergency Amendment Act of 2011 (D.C. Act 19-258, December 21, 2011, 58 DCR 11226).

For temporary (90 day) amendment of section, see § 2 of the Department of Health Functions Clarification Emergency Amendment Act of 2012 (D.C. Act 19- 391, July 13, 2012, 59 DCR 8501).

For temporary (90 day) amendment of section, see § 2 of the Department of Health Functions Clarification Emergency Amendment Act of 2012 (D.C. Act 19- 391, July 13, 2012, 59 DCR 8501).

For temporary (90 day) amendment of section, see § 2 of Department of Health Functions Clarification Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-503, October 26, 2012, 59 DCR 12759).

Legislative History of Laws

Law 18-111, the "Fiscal Year 2010 Budget Support Act of 2009", was introduced in Council and assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Miscellaneous Notes

Short title: Section 5010 of D.C. Law 18-111 provided that subtitle B of title V of the act may be cited as the "Department of Health Grant Authority Amendment Act of 2009".

§ 7-737. RULES.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this chapter.

(Oct. 3, 2001, D.C. Law 14-28, § 4908, 48 DCR 6981.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 8 of Department of Health Functions Clarification Emergency Act of 2001 (D.C. Act 14-60, June 6, 2001, 48 DCR 5701).

For temporary (90 day) addition of section, see § 4408 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative History of Laws

For Law 14-28, see notes following § 7-219.

Delegation of Authority

Delegation of Authority Pursuant to the Department of Health Functions Clarification Act of 2001 to Regulate Barber Shops, Beauty Salons, and Massage and Spa Establishments, see Mayor's Order 2006-10, January 27, 2006 (53 DCR 2711a).

Delegation of Authority under D.C. Law 14-28, the Department of Health Functions Clarification Act of 2001, see Mayor's Order 2006-34, March 12, 2006 (53 DCR 5073).

Resolutions

Resolution 15-510, the "Air Quality Control Regulation Implementing Sections 182 and 185 of the Federal Clean Air Act Emergency Approval Resolution of 2004", was approved effective April 4, 2004.

Resolution 15-512, the "Air Quality Control Regulation Implementing the Severe Area Non-attainment Requirements of the Federal Clean Air Act Emergency Approval Resolution of 2004", was approved effective April 4, 2004.

SUBCHAPTER II. INSPECTIONS, PENALTIES, WAIVER, AND EMPLOYEE RIGHTS.

§ 7-741. DEFINITIONS.

For the purposes of this subchapter, 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.

(Oct. 3, 2001, D.C. Law 14-28, § 4915, as added Apr. 4, 2006, D.C. Law 16-90, § 2(b), 53 DCR 1087.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

Law 16-90, the "Department of Health Functions Clarification Amendment Act of 2005", was introduced in Council and assigned Bill No. 16-293 which was referred to the Committee on Health. The Bill was adopted on first and second readings on December 6, 2005, and January 4, 2006, respectively. It was assigned Act No. 16-276 and transmitted to both Houses of Congress for its review. D.C. Law 16-90 became effective on April 4, 2006.

§ 7-742. 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 April 4, 2006, 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 § 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 § 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 chapter shall be required to post signs pursuant to § 7-1704 and in accordance with regulations issued pursuant to subchapter I of Chapter 17 of this title or any other District law.

(Oct. 3, 2001, D.C. Law 14-28, § 4916, as added Apr. 4, 2006, D.C. Law 16-90, § 2(b), 53 DCR 1087.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

§ 7-743. EXEMPTIONS.

(a) The following places shall be exempt from the provisions of this subchapter:

- (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.

(b) A hotel licensed under § 25-113 shall be exempt from the provisions of this part once a year for one day for the purposes of hosting a special event which permits cigar smoking; provided, that the hotel shall:

- (1) Notify the Department of Health in writing in advance of the event;
- (2) Pay a fee of \$2,500 to be remitted to the Regulatory Enforcement Fund as established under § 7-732; and
- (3) Permit employees to opt out of working the special event with no penalty.

(Oct. 3, 2001, D.C. Law 14-28, § 4917, as added Apr. 4, 2006, D.C. Law 16-90, § 2(b), 53 DCR 1087; Sept. 14, 2011, D.C. Law 19-21, § 5102, 58 DCR 6226.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 19-21 designated the existing text as subsec. (a); and added subsec. (b).

Temporary Amendments of Section

Section 2 of D.C. Law 18-167 designated the existing text as subsec. (a) and added subsec. (b) to read as follows:

"(b) A hotel licensed under D.C. Official Code § 25-113(e) shall be exempt from the provisions of this part once a year for one day for the purposes of hosting a special event which permits cigar smoking; provided, that the hotel:

- "(1) Notifies the Department of Health in writing in advance of the special event;
- "(2) Has a ballroom or special event catering space with an occupancy of 500 or more persons;
- "(3) Permits employees to opt out of working the special event with no penalty; and
- "(4) Pays a fee of \$250 to be remitted to the Department of Health Regulatory Enforcement Fund established under section 4903."

Section 4(b) of D.C. Law 18-167 provides that the act shall expire after 225 days of its having taken effect.

Section 3 of D.C. Law 19-53 rewrote subsec. (b) to read as follows:

"(b) A hotel licensed under D.C. Official Code § 25-113 shall be exempt from the provisions of this part once a year for one day for the purposes of hosting a special event that permits cigar smoking; provided, that the hotel shall:

- "(1) Notify the Department of Health in writing in advance of the event;
- "(2) Have a ballroom or special-event-catering space with an occupancy of 500 or more persons;
- "(3) Pay a fee of \$250 to be remitted to the Regulatory Enforcement Fund as established under section 4903;
- "(4) Permit employees to opt out of working the special event with no penalty; and
- "(5) Have been the recipient of a similar exemption between January 1, 2008, and October 1, 2011."

Section 15(b) of D.C. Law 19-53 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2 of Special Event Exemption Emergency Amendment Act of 2010 (D.C. Act 18-326, March 9, 2010, 57 DCR 2200).

For temporary (90 day) amendment of section, see § 5042 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

For temporary (90 day) amendment of section, see § 3 of Revised Fiscal Year 2012 Budget Support Technical Clarification Emergency Amendment Act of 2011 (D.C. Act 19-157, October 4, 2011, 58 DCR 8688).

Legislative History of Laws

For Law 16-90, see notes following § 7-741.

For history of Law 19-21, see notes under § 7-731.

Miscellaneous Notes

Short title: Section 5101 of D.C. Law 19-21 provided that subtitle K of title V of the act may be cited as "Special Events Exemption Amendment Act of 2011".

§ 7-744. PENALTIES.

An employer or person who willfully violates the requirements of this chapter 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 chapter 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.

(Oct. 3, 2001, D.C. Law 14-28, § 4918, as added Apr. 4, 2006, D.C. Law 16-90, § 2(b), 53 DCR 1087.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 16-90, see notes following § 7-741.

§ 7-745. ECONOMIC HARDSHIP WAIVER.

(a) The Mayor may grant an economic hardship waiver from the requirements of this subchapter; 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 subchapter has caused or will cause undue financial hardship. An economic hardship waiver shall be based on regulations issued in accordance with § 7-747.

(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 § 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 this subchapter.

(Oct. 3, 2001, D.C. Law 14-28, § 4919, as added Apr. 4, 2006, D.C. Law 16-90, § 2(b), 53 DCR 1087.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 16-90, see notes following § 7-741.

§ 7-746. EMPLOYEE RIGHTS AND PROTECTIONS.

(a) Places of employment and enclosed public places that permit smoking pursuant to this chapter 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 subchapter 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 chapter or reports a violation of this chapter.

(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.

(Oct. 3, 2001, D.C. Law 14-28, § 4920, as added Apr. 4, 2006, D.C. Law 16-90, § 2(b), 53 DCR 1087.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 16-90, see notes following § 7-741.

§ 7-747. RULEMAKING.

The Mayor is authorized to promulgate rules necessary to implement this chapter. Any proposed regulations issued pursuant to this chapter 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.

(Oct. 3, 2001, D.C. Law 14-28, § 4921, as added Apr. 4, 2006, D.C. Law 16-90, § 2(b), 53 DCR 1087.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 16-90, see notes following § 7-741.