

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 428 (Delegate Frush, *et al.*)
Health and Government Operations

Clean Indoor Air Act of 2005

This bill expands the locations in which individuals are not allowed to smoke and increases the fines for smoking in nonsmoking areas. The bill does not preempt a county or municipal government from enacting and enforcing additional measures to reduce involuntary exposure to environmental tobacco smoke.

Fiscal Summary

State Effect: Since smoking is already prohibited in many areas and enforcement is already required, enforcement of the bill's provisions could be handled within existing resources. The civil penalty provisions of this bill are not expected to significantly affect State finances.

Local Effect: Since smoking is already prohibited in many areas and enforcement is already required, enforcement of the bill's provisions could be handled within existing resources.

Small Business Effect: Potential meaningful effect on small business restaurants and bars that derive business from smoking bar customers. The Department of Labor, Licensing, and Regulation (DLLR) estimates that 5,000 bars and taverns would not be permitted to allow smoking under this bill.

Analysis

Bill Summary: Individuals may not smoke in an indoor area open to the public; an indoor place where public meetings are held; a government-owned or operated means of

mass transportation including buses, vans, trains, taxicabs, and limousines; or an indoor place of employment.

The nonsmoking ban does not apply to private homes, residences, and automobiles unless they are being used for child or day care, the public transportation of children, or as part of health care or day care transportation. The ban does not apply to a hotel or motel room rented to one or more guests as long as the total percentage of hotel or motel rooms being used as a smoking room does not exceed 25%. It also does not apply to an indoor area being used for the purpose of a theatrical performance, a musical concert, or the production of a film if environmental tobacco smoke is a part of the performance, concert, or film.

Smoking-permitted signs must be prominently posted and properly maintained where smoking is allowed. The signs must be posted and maintained by the owner, operator, manager, or other person having control over the area.

The Department of Health and Mental Hygiene (DHMH) must adopt regulations prohibiting smoking in indoor areas open to the public. DLLR must adopt regulations prohibiting smoking in indoor places of employment not normally open to the general public. DHMH and DLLR must report to the General Assembly each year by September 30 on their enforcement efforts and the results of those efforts to eliminate tobacco smoke in indoor areas in the prior year.

In addition, the bill allows the County Commissioners of Frederick County to continue to regulate the smoking of tobacco products in public buildings owned, controlled, or financed by the State through the adoption of regulations or enactment of laws as long as those regulations and laws are at least as stringent as the bill's provisions. The bill allows the County Commissioners of Washington County to continue to enact ordinances regulating smoking in county offices and county office buildings as long as those ordinances are at least as stringent as the bill's provisions.

Penalty Provisions

The penalty for a person or employer who violates any provision of this bill or the regulations adopted by DHMH is \$100 for the first violation and at least \$250 for each subsequent violation.

An employer who discharges or discriminates against an employee because that person has made a complaint, given information to DHMH or DLLR, has brought action or is about to bring action under this bill, or has testified or is about to testify in a proceeding

under this bill is subject to a civil penalty of at least \$2,000 but not more than \$10,000 for each violation.

Current Law: Smoking tobacco products is allowed in: (1) private residences; (2) any establishment that is not a restaurant or hotel, possesses an alcoholic beverages license, and is a bar or tavern; (3) a bar in a hotel or motel; (4) a club that has an alcoholic beverages license; (5) restaurants under specific conditions; (6) up to 40% of a hotel's or motel's sleeping rooms; (7) any other separate enclosed room in an establishment that holds an alcoholic beverages license; or (8) up to 40% of the premises of a fraternal, religious, patriotic, or charitable organization, corporation, fire company, or rescue squad subject to the authority of the Secretary of Health and Mental Hygiene during a public event.

Smoking is not allowed in the public areas of retail stores. A retail store supervisor who does not post and conspicuously place signs that indicate smoking is not permitted in the public area of a retail store is subject to a civil fine of up to \$25. Smoking is not allowed in hospitals. A director of a nursing home, health clinic, or physician's office must make and carry out a plan that adequately protects the health of nonsmoking patients by regulating the smoking of tobacco products on the premises.

Counties or municipal corporations of the State, except for Charles and St. Mary's counties, may enact ordinances, resolutions, laws, or rules that are more stringent than State statute.

Background:

Secondhand Smoking Health Effects

According to the Centers for Disease Control and Prevention (CDC), secondhand smoke has been shown to cause cancer in people. Secondhand smoke is a mixture of more than 4,000 chemicals, 42 of which are carcinogens. People who are exposed to secondhand smoke were found to have cotinine, which is created when the body processes nicotine, in their blood, saliva, and urine.

CDC also reports that, each year, about 3,000 nonsmoking adults (people who never smoked and people who used to smoke) in the U.S. die of lung cancer as a result of exposure to secondhand smoke. Secondhand smoke also is responsible for about 35,000 deaths from coronary heart disease in adult nonsmokers each year.

Existing Smoking Bans in Maryland Counties

On October 9, 2003, a Montgomery County Council law banning smoking in restaurants and bars took effect. The ban does not include a bar and dining area of an eating and drinking establishment that is a club as defined in the State alcoholic beverages law, has an alcoholic beverages license issued to private clubs under the State alcoholic beverages law, and allows the drinking of alcoholic beverages. The law requires the county Department of Economic Development to establish and administer a fund for marketing assistance to county restaurants affected by this bill.

A 1999 Montgomery County health regulation prohibiting smoking in eating and drinking establishments other than private clubs was declared invalid by the Circuit Court for Montgomery County. The Court of Appeals of Maryland found the regulation invalid on May 2, 2003.

The county ban does not apply to the 22 municipalities within its limits. However, the county identified 12 municipalities that previously adopted the county's smoking law affecting eating and drinking establishments. Montgomery County expects that these municipalities are likely to adopt the more stringent requirements.

A City of Rockville ordinance that bans smoking in eating and drinking establishments was adopted December 8, 2003 and took effect February 1, 2004.

A Talbot County Council ordinance extending its smoking prohibition became effective in April 2004. Prior to the ordinance, smoking was banned in restaurants. Bars and the bar area, not exceeding 40% of the total area of a restaurant, were exempt from the ban. Under the ordinance, bar areas are no longer exempt from the smoking ban. However, the bar and dining area of a club that has a Class G alcoholic beverage license is exempt from the smoking ban.

Other State Smoking Bans

The Delaware Clean Indoor Air Act prohibiting smoking in any enclosed area to which the general public is invited was signed into law on May 31, 2002. A Delaware bill introduced in 2003 amending the Clean Air Act by allowing smoking in taverns, taprooms, horse racetracks, video lottery machine facilities, and nonprofit bingo and charitable gambling facilities was defeated.

New York State enacted a law in 2003 prohibiting smoking in almost all indoor workplaces, extending the ban to outdoor seating areas for bars where food service is incidental to consuming alcohol. Cigar bars are exempted from the ban, as are enclosed

rooms in bars, restaurants, and convention centers used to promote or sample tobacco products. However, the New York Department of Health will allow government officials to waive the ban for restaurant and bar owners that lost business due to the ban.

Connecticut enacted a law in 2003 that bans smoking in restaurants, cafes, taverns, and other locations. Maine enacted a law in 2003 prohibiting smoking in pool halls, taverns, and lounges. In 2002, Florida voters approved a constitutional amendment to the Clean Indoor Air Act that bans smoking in most indoor areas, including restaurants.

District of Columbia

The District of Columbia does not ban smoking in bars and restaurants in the district. The District of Columbia Board of Elections and Ethics attempted to place the issue of a public smoking ban before the voters last year by placing the “D.C. Smokefree Workplaces Initiative of 2004” on the November general election ballot. The initiative would have: (1) prohibited smoking in indoor workplaces and public places; (2) required no-smoking signs to be posted in and ashtrays removed from smoke-free areas; and (3) established fines for violations. However, a District of Columbia Superior Court Judge ruled in May 2004 that the board must reject the initiative because it is invalid and improper.

Small Business Effect: Revenues for small business bars and restaurants, especially those within close proximity to the District of Columbia and the Pennsylvania, Virginia, and West Virginia borders could see a reduction in revenues from smoking customers as they go to restaurants or bars that do not ban smoking, stay home, or reduce the hours they spend in Maryland bars and restaurants.

DLLR estimates that 5,000 bars and taverns would not be permitted to allow smoking under this bill.

A Restaurant Association of Maryland study of State sales tax data shows sales of Talbot County restaurants and bars with liquor licenses from May through December of 2004 fell by 11% (\$2.9 million) compared to the same period the prior year. The number of restaurants and bars with liquor licenses in the county fell from 39 establishments in November 2003 to 29 at the end of December 2004.

Sales at Montgomery County restaurants and bars with liquor licenses from April through December 2004 increased by \$110,480 compared to the same period in 2003, according to the study. The total number of county restaurants and bars with liquor licenses fell from 526 establishments in March 2003 to 402 at the end of December 2004.

Additionally, the study reported that data from the Montgomery County Department of Liquor Control shows the number of beer keg sales declined by 2,366 from April through December 2004, compared to same period the prior year. According to the association, keg sales are the best indicator of lost alcohol sales at establishments that have a bar at which customers can smoke.

A December 2003 evaluation of multiple smoking studies attempting to predict or assess the economic impact of smoke-free policies in the hospitality industry, many of them focusing on areas of the U.S., shows no net negative impact on restaurants and bars. These studies: (1) used objective measures such as taxable sales receipts; (2) compared data for several years before and after the smoke-free policies were introduced; (3) controlled for changes in economic conditions; and (4) used statistical tests, where appropriate, to control for data trends and fluctuations.

While the studies generally showed no net impact on the hospitality industry as a whole, they did acknowledge there were winners and losers from smoking bans. Some establishments saw increased business while others lost customers.

Additional Information

Prior Introductions: Similar bills, SB 140 and its cross file HB 260, were introduced in the 2004 session. SB 140 received an unfavorable report from the Finance Committee. HB 260 had a hearing in the Health and Government Operations Committee but no further action was taken. A similar bill, HB 771, introduced in the 2003 session had a hearing in the Health and Government Operations Committee but no further action was taken. Its cross file, SB 261, received an unfavorable report from the Finance Committee.

Cross File: SB 332 (Senator Ruben, *et al.*) – Finance.

Information Source(s): Maryland Chamber of Commerce; Washington County; Montgomery County; Prince George's County; Kent County; Worcester County; Talbot County; Comptroller's Office; Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; *Restaurant Association of Metropolitan Washington, et al. v. District of Columbia Board of Elections and Ethics, et al.*, District of Columbia Superior Court, May 21, 2004; *Secondhand Smoke and Family Health*, Centers for Disease Control and Prevention; *Public Place Smoking*, October 1, 2003, National Conference of State Legislatures; *Public Place Smoking: Third Quarter Report*, September 23, 2003, National Conference of State Legislatures; *Summary of Studies Assessing the Economic Impact of Smoke – Free Policies in the Hospitality Industry*,

VicHealth Centre for Tobacco Control, Melbourne, Australia, December 2003;
Department of Legislative Services

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