

SENATE BILL 261

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2003 Regular Session
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By: **Senators Ruben, Forehand, Grosfeld, Pinsky, and Teitelbaum**
Introduced and read first time: January 30, 2003
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Clean Indoor Air Act of 2003**

3 FOR the purpose of prohibiting a person from smoking tobacco products except under
4 certain circumstances; repealing certain provisions of law that authorize certain
5 counties to regulate smoking; altering the penalty imposed on a person who
6 smokes tobacco products in an elevator; repealing certain provisions of law
7 concerning tobacco smoking in retail stores; giving the intent of the Act;
8 declaring the intent of the General Assembly; prohibiting a person from smoking
9 in indoor areas open to the public, except under certain circumstances; requiring
10 the posting of certain signs; requiring the Department of Health and Mental
11 Hygiene to adopt certain regulations; requiring the Department to report to the
12 General Assembly regarding certain provisions of this Act; establishing certain
13 penalties for certain violations of this Act; prohibiting smoking in places of
14 employment; requiring the Department of Labor, Licensing, and Regulation to
15 adopt certain regulations; requiring the Department to report to the General
16 Assembly regarding its enforcement efforts and the effect of the efforts;
17 establishing certain penalties for certain violations in places of employment;
18 altering the penalty imposed in connection with smoking tobacco products on an
19 intrastate motor bus carrier; defining certain terms; declaring that nothing in
20 this Act shall be construed to preempt a certain entity from enacting and
21 enforcing certain measures; and generally relating to the prohibition of smoking
22 in indoor areas open to the public and places of employment.

23 BY repealing
24 Article 25 - County Commissioners
25 Section 3(jj) and 236B
26 Annotated Code of Maryland
27 (2001 Replacement Volume and 2002 Supplement)

28 BY renumbering
29 Article 25 - County Commissioners
30 Section 3(kk) through (qq), 236C, and 236D, respectively
31 to be Section 3(jj) through (pp), 236B, and 236C, respectively
32 Annotated Code of Maryland

- 1 (2001 Replacement Volume and 2002 Supplement)
- 2 BY repealing and reenacting, with amendments,
3 Article 89 - Miscellaneous Business, Work, and Safety Provisions
4 Section 64
5 Annotated Code of Maryland
6 (1998 Replacement Volume and 2002 Supplement)
- 7 BY repealing
8 Article - Business Regulation
9 Section 2-105(d)
10 Annotated Code of Maryland
11 (1998 Replacement Volume and 2002 Supplement)
- 12 BY repealing and reenacting, with amendments,
13 Article - Health - General
14 Section 24-205
15 Annotated Code of Maryland
16 (2000 Replacement Volume and 2002 Supplement)
- 17 BY repealing
18 Article - Health - General
19 Section 24-501 through 24-505, inclusive, and the subtitle "Subtitle 5. Tobacco
20 Smoking in Retail Stores"
21 Annotated Code of Maryland
22 (2000 Replacement Volume and 2002 Supplement)
- 23 BY adding to
24 Article - Health - General
25 Section 24-501 through 24-509, inclusive, to be under the new subtitle "Subtitle
26 5. Clean Indoor Air Act"
27 Annotated Code of Maryland
28 (2000 Replacement Volume and 2002 Supplement)
- 29 BY repealing
30 Article - Labor and Employment
31 Section 2-106(c) and 5-314(c)
32 Annotated Code of Maryland
33 (1999 Replacement Volume and 2002 Supplement)
- 34 BY repealing and reenacting, without amendments,
35 Article - Labor and Employment
36 Section 5-101(a), (c), (d), and (g)
37 Annotated Code of Maryland

1 (1999 Replacement Volume and 2002 Supplement)

2 BY adding to

3 Article - Labor and Employment

4 Section 5-608

5 Annotated Code of Maryland

6 (1999 Replacement Volume and 2002 Supplement)

7 BY repealing and reenacting, with amendments,

8 Article - Public Utility Companies

9 Section 9-206

10 Annotated Code of Maryland

11 (1998 Volume and 2002 Supplement)

12 BY repealing and reenacting, without amendments,

13 Article - Transportation

14 Section 7-705(b)(2), (d), and (e)

15 Annotated Code of Maryland

16 (2001 Replacement Volume and 2002 Supplement)

17 BY renumbering

18 Article - Labor and Employment

19 Section 2-106(d) and (e), respectively

20 to be Section 2-106(c) and (d), respectively

21 Annotated Code of Maryland

22 (1999 Replacement Volume and 2002 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article 25 - County Commissioners**

26 3.

27 [(jj) The County Commissioners of Frederick County may regulate the smoking
28 of tobacco products by designating smoking and no smoking areas in public buildings
29 owned, controlled, or financed by the State of Maryland in Frederick County.]

30 [236B.

31 The County Commissioners for Washington County may enact ordinances
32 regulating smoking in county offices and county office buildings. Any ordinance
33 enacted shall assure and provide for employees and the public to smoke in designated
34 smoking places.]

1 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 3(kk) through
 2 (qq), 236C, and 236D, respectively, of Article 25 - County Commissioners of the
 3 Annotated Code of Maryland be renumbered to be Section(s) 3(jj) through (pp), 236B,
 4 and 236C, respectively.

5 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 6 read as follows:

7 **Article 89 - Miscellaneous Business, Work, and Safety Provisions**

8 64.

9 (a) A PERSON MAY NOT SMOKE IN AN ELEVATOR.

10 (B) The proprietor of a building containing [any] AN elevator whose use is
 11 available to the general public shall post a sign [prohibiting the smoking of tobacco
 12 products] in that elevator[. The sign shall state] STATING "Smoking in This Elevator
 13 Is Illegal and Subject to a Penalty [Not to Exceed \$25.00] OF \$100 FOR THE FIRST
 14 VIOLATION AND AT LEAST \$250 FOR EACH SUBSEQUENT VIOLATION".

15 [(b) A person may not smoke tobacco products in any area prohibited under
 16 subsection (a).]

17 (c) The Commissioner of Labor and Industry may promulgate rules and
 18 regulations in furtherance of the provisions of this section.

19 (d) [Any] A person who violates [any provision of] this section is subject to a
 20 civil penalty [not to exceed \$25] OF \$100 FOR THE FIRST VIOLATION AND AT LEAST
 21 \$250 FOR EACH SUBSEQUENT VIOLATION.

22 **Article - Business Regulation**

23 2-105.

24 [(d) (1) (i) Notwithstanding any regulations adopted by the Secretary
 25 under this section, the smoking of tobacco products is permitted in any of the
 26 following locations unless restricted as authorized under paragraph (3) of this
 27 subsection:

28 1. any portion of a private residence which is not open to the
 29 public for business purposes;

30 2. any establishment that:

31 A. is not a restaurant or hotel as defined in Article 2B, §
 32 1-102 of the Code;

33 B. possesses an alcoholic beverages license issued under
 34 Article 2B of the Code that allows consumption of alcoholic beverages on the premises
 35 of the establishment; and

- 1 C. is generally recognized as a bar or tavern;
- 2 3. a bar in a hotel or motel;
- 3 4. a club as defined in Article 2B, § 1-102 of the Code that
4 possesses an alcoholic beverages license issued under Article 2B of the Code and that
5 allows consumption of alcoholic beverages on the premises of the club;
- 6 5. in the case of a restaurant as defined in Article 2B, §
7 1-102 of the Code:
- 8 A. if the restaurant does not possess an alcoholic beverages
9 license issued under Article 2B of the Code, a separate enclosed room not to exceed
10 40% of the total area of the restaurant; or
- 11 B. if the restaurant possesses an alcoholic beverages license
12 issued under Article 2B of the Code, a bar or bar area, a separate enclosed room not
13 exceeding 40% of the restaurant, or a combination of a bar or bar area and a separate
14 enclosed room not exceeding 40% of the total area of the restaurant including the bar
15 or bar area;
- 16 6. up to 40% of the sleeping rooms in a hotel or motel;
- 17 7. a separate enclosed room of an establishment other than
18 an establishment specified in items 1 through 6 of this subparagraph that possesses
19 an alcoholic beverages license issued under Article 2B of the Code that allows
20 consumption of alcoholic beverages on the premises of the establishment; or
- 21 8. up to 40% of the premises of a fraternal, religious,
22 patriotic, or charitable organization or corporation or fire company or rescue squad
23 that is subject to the authority of the Secretary during an event that the organization
24 or corporation holds on its own property and which is open to the public.
- 25 (ii) A separate enclosed room in which smoking is permitted under
26 subparagraph (i) of this paragraph is not required to have a specially modified
27 ventilation system for the room.
- 28 (2) For the purposes of paragraph (1)(i)5B of this subsection, "bar or bar
29 area" means an area within a restaurant that is devoted to the serving of alcoholic
30 beverages for consumption by guests on the premises and in which the serving of food
31 is incidental to the consumption of the alcoholic beverages, and the immediately
32 adjacent seating area.
- 33 (3) Notwithstanding the provisions of this subsection, a proprietor of an
34 establishment described in paragraph (1) of this subsection may restrict or prohibit
35 smoking on the premises of the establishment.]

Article - Health - General

1
2 24-205.

3 (a) In this section "smoking" means the act of smoking or carrying a burning:

4 (1) Cigar;

5 (2) Cigarette;

6 (3) Pipe; or

7 (4) Other tobacco product of any kind.

8 (b) Every director of a nursing home, health clinic, or physician's office shall
9 make and carry out a plan that adequately protects the health of nonsmoking
10 patients by regulating the smoking of tobacco products on the premises.

11 (c) (1) An individual may not smoke in any area of a hospital.

12 (2) The hospital director shall provide for the posting and placement of
13 conspicuous signs that clearly indicate that smoking is not permitted in the hospital.

14 (d) (1) [This] NOTWITHSTANDING THE PROVISIONS OF § 24-504 OF THIS
15 TITLE, THIS section does not apply to patients who are:

16 (i) In a facility for the treatment of mental disorders as defined in
17 § 10-101(e) of this article;

18 (ii) In a facility where the average patient stay is more than 30
19 days; or

20 (iii) In an acute care hospital and the attending physician
21 authorizes smoking, in writing, as part of the care for the patient.

22 (2) Smoking permitted under this section shall be in designated areas
23 that are considered safe and provide nonsmoking patients, family members, and
24 employees protection from tobacco smoke.

25 (3) Smoking may not be permitted where nonsmoking patients sleep.

26 [Subtitle 5. Tobacco Smoking in Retail Stores.]

27 [24-501.

28 (a) In this subtitle the following words have the meanings indicated.

29 (b) "Public area" means a room or a portion of a room or other area to which
30 the public has ready access.

1 (c) "Retail store" means any establishment employing 20 or more full-time
2 persons whose primary purpose is to sell to consumers any goods, wares, food for
3 consumption off the premises, or merchandise.

4 (d) "Smoking" means the act of smoking or carrying a burning:

5 (1) Cigar;

6 (2) Cigarette;

7 (3) Pipe; or

8 (4) Other tobacco product of any kind.

9 (e) "Supervisor" means the person who controls, governs, or directs the
10 activities in a retail store.]

11 [24-502.

12 (a) The provisions of this subtitle do not apply to:

13 (1) A restaurant;

14 (2) A restaurant area of a retail store;

15 (3) A tobacconist;

16 (4) A lavatory or restroom in a retail store; or

17 (5) A work area of a retail store:

18 (i) To which the public does not have access; and

19 (ii) That can be physically isolated by a room with doors closed.

20 (b) Except as provided in this subtitle, an individual or employee may not
21 smoke in the public area of a retail store in this State.]

22 [24-503.

23 (a) A supervisor shall provide for the posting and placement of conspicuous
24 signs that clearly indicate that smoking is not permitted in the public area of a retail
25 store.

26 (b) A supervisor violates this subtitle if the supervisor fails to comply with the
27 provision of subsection (a) of this section.

28 (c) A supervisor does not violate this section if:

29 (1) The supervisor complies with the provision of subsection (a) of this
30 section; and

1 (2) The public or employees persist in or continue their smoking in a
2 public area.]

3 [24-504.

4 (a) The Secretary shall adopt rules and regulations to enforce the provisions of
5 this subtitle.

6 (b) A person who violates § 24-503(a) of this subtitle is subject to a civil
7 penalty of \$25.]

8 [24-505.

9 (a) Except as provided in subsection (b) of this section, this subtitle does not
10 prohibit any county or municipal corporation of the State from enacting an ordinance,
11 resolution, law, or rule that is more stringent than the provisions of this subtitle.

12 (b) Charles County and St. Mary's County may not enact an ordinance,
13 resolution, law, or rule that is more stringent than the provisions of this subtitle.]

14 SUBTITLE 5. CLEAN INDOOR AIR ACT.

15 24-501.

16 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
17 INDICATED.

18 (B) "AUDITORIUM" MEANS THE PART OF A PUBLIC BUILDING WHERE AN
19 AUDIENCE SITS AND INCLUDES ANY ADJACENT CORRIDORS, HALLWAYS, OR
20 LOBBIES.

21 (C) "BAR" MEANS AN INDOOR AREA OPEN TO THE PUBLIC OPERATED BY AN
22 INDIVIDUAL WHO HOLDS AN ALCOHOLIC BEVERAGES LICENSE THAT WAS ISSUED
23 UNDER ARTICLE 2B, DEVOTED TO THE SERVING OF ALCOHOLIC BEVERAGES FOR
24 CONSUMPTION BY GUESTS ON THE PREMISES, AND IN THE IMMEDIATELY ADJACENT
25 SEATING AREA, IN WHICH THE SERVING OF FOOD IS INCIDENTAL TO THE
26 CONSUMPTION OF THE ALCOHOLIC BEVERAGES.

27 (D) "EMPLOYEE" HAS THE MEANING STATED IN § 5-101 OF THE LABOR AND
28 EMPLOYMENT ARTICLE.

29 (E) "EMPLOYER" HAS THE MEANING STATED IN § 5-101 OF THE LABOR AND
30 EMPLOYMENT ARTICLE.

31 (F) "ENVIRONMENTAL TOBACCO SMOKE" MEANS THE COMPLEX MIXTURE
32 FORMED FROM THE ESCAPING SMOKE OF A BURNING TOBACCO PRODUCT OR SMOKE
33 EXHALED BY THE SMOKER.

1 (G) (1) "FOOD SERVICE ESTABLISHMENT" MEANS AN INDOOR AREA OPEN TO
2 THE PUBLIC IN WHICH THE PRINCIPAL BUSINESS IS THE SALE OF FOOD FOR
3 ON-PREMISES CONSUMPTION, INCLUDING:

4 (I) RESTAURANTS;

5 (II) CAFETERIAS;

6 (III) COFFEE SHOPS;

7 (IV) DINERS;

8 (V) SANDWICH SHOPS; AND

9 (VI) SHORT-ORDER CAFES.

10 (2) "FOOD SERVICE ESTABLISHMENT" DOES NOT INCLUDE THE BAR
11 AREA OF THE ESTABLISHMENT.

12 (H) "INDOOR AREA OPEN TO THE PUBLIC" MEANS AN INDOOR AREA, OR A
13 PORTION OF AN INDOOR AREA, ACCESSIBLE TO THE PUBLIC BY EITHER INVITATION
14 OR PERMISSION.

15 (I) "PLACE OF EMPLOYMENT" HAS THE MEANING STATED IN § 5-101 OF THE
16 LABOR AND EMPLOYMENT ARTICLE.

17 (J) (1) "PUBLIC BUILDING" MEANS A BUILDING, STRUCTURE, OR IMPROVED
18 AREA THAT IS:

19 (I) OWNED BY THE STATE, A COUNTY, OR A MUNICIPAL
20 CORPORATION OF THE STATE; OR

21 (II) CONSTRUCTED FOR LEASE BY THE STATE, A COUNTY, OR A
22 MUNICIPAL CORPORATION OF THE STATE.

23 (2) "PUBLIC BUILDING" INCLUDES:

24 (I) AN EDUCATIONAL FACILITY CONSTRUCTED WITH PUBLIC
25 FUNDS OR OWNED OR OPERATED BY THE STATE, A COUNTY, OR A MUNICIPAL
26 CORPORATION OF THE STATE;

27 (II) A PUBLIC MASS TRANSPORTATION ACCOMMODATION, SUCH AS
28 A TERMINAL OR STATION, THAT IS SUPPORTED BY PUBLIC FUNDS; AND

29 (III) AN IMPROVEMENT OF A PUBLIC AREA USED FOR GATHERING
30 OR AMUSEMENT, INCLUDING A PUBLIC PARK, RECREATION CENTER, OR THE LIKE.

31 (K) "SMOKING" MEANS THE BURNING OF A LIGHTED CIGARETTE, CIGAR, PIPE,
32 OR ANY OTHER MATTER OR SUBSTANCE THAT CONTAINS TOBACCO.

1 24-502.

2 IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE STATE PROTECT THE
3 PUBLIC AND EMPLOYEES FROM INVOLUNTARY EXPOSURE TO ENVIRONMENTAL
4 TOBACCO SMOKE IN INDOOR AREAS OPEN TO THE PUBLIC, PLACES OF EMPLOYMENT,
5 AND CERTAIN DESIGNATED PRIVATE AREAS.

6 24-503.

7 THE PURPOSE OF THIS ACT IS TO PRESERVE AND IMPROVE THE HEALTH,
8 COMFORT, AND ENVIRONMENT OF THE PEOPLE OF THE STATE BY LIMITING
9 EXPOSURE TO ENVIRONMENTAL TOBACCO SMOKE.

10 24-504.

11 EXCEPT AS PROVIDED IN § 24-505 OF THIS SUBTITLE, A PERSON MAY NOT
12 SMOKE IN AN INDOOR AREA OPEN TO THE PUBLIC, INCLUDING:

13 (1) MEETINGS OPEN TO THE PUBLIC IN ACCORDANCE WITH TITLE 10,
14 SUBTITLE 5 OF THE STATE GOVERNMENT ARTICLE;

15 (2) GOVERNMENT OWNED OR OPERATED MEANS OF MASS
16 TRANSPORTATION INCLUDING BUSES, VANS, TRAINS, TAXICABS, AND LIMOUSINES;

17 (3) GROCERY STORES;

18 (4) GYMNASIUMS;

19 (5) COURT HOUSES;

20 (6) CHILD DAY CARE FACILITIES;

21 (7) HEALTH CARE FACILITIES INCLUDING HOSPITALS, HEALTH CARE
22 CLINICS, DOCTORS' OFFICES, OR OTHER HEALTH CARE RELATED FACILITIES;

23 (8) PLACES OF EMPLOYMENT;

24 (9) RESTROOMS, LOBBIES, RECEPTION AREAS, HALLWAYS, AND OTHER
25 COMMON-USE AREAS;

26 (10) FOOD SERVICE ESTABLISHMENTS;

27 (11) BARS OR TAVERNS;

28 (12) GAMING FACILITIES THAT ARE OPEN TO THE PUBLIC;

29 (13) INDOOR SPORTS ARENAS INCLUDING MOTOR SPORTS SPEEDWAYS;

30 (14) LOBBIES, HALLWAYS, AND OTHER COMMON AREAS IN APARTMENT
31 BUILDINGS, CONDOMINIUMS, AND OTHER MULTIPLE-UNIT RESIDENTIAL
32 FACILITIES;

1 (15) LOBBIES, HALLWAYS, AND OTHER COMMON AREAS IN HOTELS AND
2 MOTELS;

3 (16) AT LEAST 75% OF THE RENTED SLEEPING QUARTERS WITHIN A
4 HOTEL OR MOTEL;

5 (17) BOWLING ALLEYS;

6 (18) BILLIARD OR POOL HALLS;

7 (19) EXCEPT AS PROVIDED IN § 24-205 OF THIS TITLE, RETIREMENT
8 FACILITIES AND NURSING HOMES, NOT INCLUDING A PRIVATE RESIDENCE;

9 (20) PUBLIC BUILDINGS;

10 (21) AUDITORIA;

11 (22) THEATERS;

12 (23) MUSEUMS;

13 (24) LIBRARIES;

14 (25) PUBLIC AND NONPUBLIC SCHOOLS; AND

15 (26) OTHER EDUCATIONAL AND VOCATIONAL INSTITUTIONS.

16 24-505.

17 THIS SUBTITLE DOES NOT APPLY TO:

18 (1) PRIVATE HOMES, RESIDENCES, INCLUDING RESIDENCES USED AS A
19 BUSINESS OR PLACE OF EMPLOYMENT, AND AUTOMOBILES, UNLESS BEING USED
20 FOR CHILD CARE, DAY CARE, THE PUBLIC TRANSPORTATION OF CHILDREN, OR AS
21 PART OF HEALTH CARE OR DAY CARE TRANSPORTATION;

22 (2) AN INDOOR AREA WHERE PRIVATE SOCIAL FUNCTIONS ARE BEING
23 HELD, INCLUDING A PRIVATE CLUB IF THE SPONSOR WAS A MEMBER ON OR BEFORE
24 JUNE 1, 2003, WHEN SEATING ARRANGEMENTS ARE UNDER THE CONTROL OF THE
25 SPONSOR OF THE FUNCTION AND NOT THE OWNER, OPERATOR, MANAGER, OR
26 PERSON IN CHARGE OF THE INDOOR AREA;

27 (3) LIMOUSINES UNDER PRIVATE HIRE;

28 (4) A HOTEL OR MOTEL ROOM RENTED TO ONE OR MORE GUESTS AS
29 LONG AS THE TOTAL PERCENTAGE OF HOTEL OR MOTEL ROOMS BEING SO USED
30 DOES NOT EXCEED 25%;

31 (5) A FUND-RAISING ACTIVITY OR FUNCTION SPONSORED BY A
32 VOLUNTEER FIRE COMPANY, AUXILIARY OF A FIRE COMPANY, A VOLUNTEER
33 AMBULANCE COMPANY, A VOLUNTEER RESCUE COMPANY, OR A FRATERNAL

1 BENEFIT SOCIETY THAT WAS IN EXISTENCE ON OR BEFORE JUNE 1, 2003, IF THE
2 FUND-RAISING ACTIVITY OR FUNCTION TAKES PLACE ON PROPERTY OWNED OR
3 LEASED ON OR BEFORE JUNE 1, 2003, BY THE VOLUNTEER FIRE COMPANY, AUXILIARY
4 OF A VOLUNTEER FIRE COMPANY, VOLUNTEER AMBULANCE COMPANY, VOLUNTEER
5 RESCUE COMPANY, OR FRATERNAL BENEFIT SOCIETY; OR

6 (6) AN INDOOR AREA BEING USED FOR THE PURPOSE OF A THEATRICAL
7 PERFORMANCE, A MUSICAL CONCERT, OR THE PRODUCTION OF A FILM IF
8 ENVIRONMENTAL TOBACCO SMOKE IS A PART OF THE PERFORMANCE, CONCERT, OR
9 FILM.

10 24-506.

11 (A) SIGNS THAT STATE "WARNING: SMOKING PERMITTED" SHALL BE
12 PROMINENTLY POSTED AND PROPERLY MAINTAINED WHERE SMOKING IS ALLOWED
13 UNDER § 24-505(2) OR (4) OR § 24-507(B) OF THIS SUBTITLE.

14 (B) THE SIGNS SHALL BE POSTED AND MAINTAINED BY THE OWNER,
15 OPERATOR, MANAGER, OR OTHER PERSON HAVING CONTROL OF THE AREA.

16 (C) THE LETTERS ON THE SIGNS SHALL BE AT LEAST 1 INCH IN HEIGHT.

17 24-507.

18 (A) THE DEPARTMENT SHALL ADOPT REGULATIONS THAT PROHIBIT
19 ENVIRONMENTAL TOBACCO SMOKE IN INDOOR AREAS OPEN TO THE PUBLIC OTHER
20 THAN PLACES OF EMPLOYMENT.

21 (B) ON OR BEFORE SEPTEMBER 30 OF EACH YEAR, THE DEPARTMENT SHALL
22 REPORT TO THE GENERAL ASSEMBLY ON THE:

23 (1) ENFORCEMENT EFFORTS OF THE DEPARTMENT TO ELIMINATE
24 ENVIRONMENTAL TOBACCO SMOKE IN INDOOR AREAS OPEN TO THE PUBLIC FOR
25 THE PRIOR YEAR; AND

26 (2) RESULTS OF THESE ENFORCEMENT EFFORTS.

27 24-508.

28 (A) A PERSON OR EMPLOYER WHO VIOLATES A PROVISION OF THIS SUBTITLE
29 OR A REGULATION ADOPTED UNDER THIS SUBTITLE SHALL BE SUBJECT TO A FINE
30 OF \$100 FOR THE FIRST VIOLATION AND AT LEAST \$250 FOR EACH SUBSEQUENT
31 VIOLATION.

32 (B) AN EMPLOYER WHO DISCHARGES OR DISCRIMINATES AGAINST AN
33 EMPLOYEE BECAUSE THAT EMPLOYEE HAS MADE A COMPLAINT, HAS GIVEN
34 INFORMATION TO THE DEPARTMENT IN ACCORDANCE WITH THIS SUBTITLE, HAS
35 CAUSED TO BE INSTITUTED OR IS ABOUT TO CAUSE TO BE INSTITUTED A
36 PROCEEDING UNDER THIS SUBTITLE, OR HAS TESTIFIED OR IS ABOUT TO TESTIFY IN
37 A PROCEEDING UNDER THIS SUBTITLE, SHALL BE DEEMED IN VIOLATION OF THIS

1 SUBTITLE AND SHALL BE SUBJECT TO A CIVIL PENALTY OF AT LEAST \$2,000 BUT NOT
2 MORE THAN \$10,000 FOR EACH VIOLATION.

3 24-509.

4 THIS SUBTITLE MAY BE CITED AS THE CLEAN INDOOR AIR ACT.

5 **Article - Labor and Employment**

6 2-106.

7 [(c) (1) (i) Notwithstanding any regulations adopted by the Commissioner
8 under this section, the smoking of tobacco products is permitted in any of the
9 following locations unless restricted as authorized under paragraph (3) of this
10 subsection:

- 11 1. any portion of a private residence which is not open to the
12 public for business purposes;
- 13 2. any establishment that:
 - 14 A. is not a restaurant or hotel as defined in Article 2B, §
15 1-102 of the Code;
 - 16 B. possesses an alcoholic beverages license issued under
17 Article 2B of the Code that allows consumption of alcoholic beverages on the premises
18 of the establishment; and
 - 19 C. is generally recognized as a bar or tavern;
- 20 3. a bar in a hotel or motel;
- 21 4. a club as defined in Article 2B, § 1-102 of the Code that
22 possesses an alcoholic beverages license issued under Article 2B of the Code and that
23 allows consumption of alcoholic beverages on the premises of the club;
- 24 5. in the case of a restaurant as defined in Article 2B, §
25 1-102 of the Code:
 - 26 A. if the restaurant does not possess an alcoholic beverages
27 license issued under Article 2B of the Code, a separate enclosed room not to exceed
28 40% of the total area of the restaurant; or
 - 29 B. if the restaurant possesses an alcoholic beverages license
30 issued under Article 2B of the Code, a bar or bar area, a separate enclosed room not
31 exceeding 40% of the restaurant, or a combination of a bar or bar area and a separate
32 enclosed room not exceeding 40% of the total area of the restaurant including the bar
33 or bar area;
- 34 6. up to 40% of the sleeping rooms in a hotel or motel;

1 7. a separate enclosed room of an establishment other than
2 an establishment specified in items 1 through 6 of this subparagraph that possesses
3 an alcoholic beverages license issued under Article 2B of the Code that allows
4 consumption of alcoholic beverages on the premises of the establishment; or

5 8. up to 40% of the premises of a fraternal, religious,
6 patriotic, or charitable organization or corporation or fire company or rescue squad
7 that is subject to the authority of the Secretary during an event that the organization
8 or corporation holds on its own property and which is open to the public.

9 (ii) A separate enclosed room in which smoking is permitted under
10 subparagraph (i) of this paragraph is not required to have a specially modified
11 ventilation system for the room.

12 (2) For the purposes of paragraph (1)(i)5B of this subsection, "bar or bar
13 area" means an area within a restaurant that is devoted to the serving of alcoholic
14 beverages for consumption by guests on the premises and in which the serving of food
15 is incidental to the consumption of the alcoholic beverages, and the immediately
16 adjacent seating area.

17 (3) Notwithstanding the provisions of this subsection, a proprietor of an
18 establishment described in paragraph (1) of this subsection may restrict or prohibit
19 smoking on the premises of the establishment.]

20 5-101.

21 (a) In this title the following words have the meanings indicated.

22 (c) (1) "Employee" means, except as provided in § 5-401 of this title, an
23 individual whom an employer employs, for a wage or other compensation, in the
24 business of the employer.

25 (2) "Employee" includes:

26 (i) an individual whom a governmental unit employs;

27 (ii) an individual who is licensed as a taxicab driver and leases or
28 rents a taxicab from a person who operates or owns a taxicab business in Baltimore
29 City;

30 (iii) an individual who is employed for part-time or temporary help
31 by a governmental unit or person who engages in a business that directly employs
32 individuals to provide part-time or temporary help to another governmental unit or
33 person; and

34 (iv) an individual who performs work for a governmental unit or
35 person to whom the individual is provided by another governmental unit or person
36 who engages in a business that directly employs individuals to provide part-time or
37 temporary help.

1 (d) (1) "Employer" means:

2 (i) except as provided in § 5-401 of this title, a person who is
3 engaged in commerce, industry, trade, or other business in the State and employs at
4 least 1 employee in that business; or

5 (ii) a public body.

6 (2) "Employer" includes:

7 (i) a person who operates or owns a taxicab business in Baltimore
8 City and leases or rents a taxicab to a licensed taxicab driver, to provide services to
9 the public;

10 (ii) a governmental unit or person who engages in a business that
11 directly employs individuals to provide part-time or temporary help to another
12 governmental unit or person; and

13 (iii) a governmental unit or person who contracts directly with
14 another governmental unit or person who engages in a business that directly employs
15 individuals to provide part-time or temporary help to another governmental unit or
16 person.

17 (g) "Place of employment" means a place in or about which an employee is
18 allowed to work.

19 5-314.

20 [(c) (1) (i) Notwithstanding any regulations adopted by the Commissioner
21 under this section, the smoking of tobacco products is permitted in any of the
22 following locations unless restricted as authorized under paragraph (3) of this
23 subsection:

24 1. any portion of a private residence which is not open to the
25 public for business purposes;

26 2. any establishment that:

27 A. is not a restaurant or hotel as defined in Article 2B, §
28 1-102 of the Code;

29 B. possesses an alcoholic beverages license issued under
30 Article 2B of the Code that allows consumption of alcoholic beverages on the premises
31 of the establishment; and

32 C. is generally recognized as a bar or tavern;

33 3. a bar in a hotel or motel;

1 (B) THE DEPARTMENT SHALL ADOPT REGULATIONS THAT PROHIBIT
2 ENVIRONMENTAL TOBACCO SMOKE, AS DEFINED IN § 24-501 OF THE HEALTH -
3 GENERAL ARTICLE, IN PLACES OF EMPLOYMENT.

4 (C) ON OR BEFORE SEPTEMBER 30 OF EACH YEAR, THE DEPARTMENT SHALL
5 REPORT TO THE GENERAL ASSEMBLY ON THE:

6 (1) ENFORCEMENT EFFORTS OF THE DEPARTMENT TO ELIMINATE
7 ENVIRONMENTAL TOBACCO SMOKE, AS DEFINED IN § 24-501 OF THE HEALTH -
8 GENERAL ARTICLE, IN PLACES OF EMPLOYMENT FOR THE PRIOR YEAR; AND

9 (2) RESULTS OF THESE ENFORCEMENT EFFORTS.

10 (D) AN EMPLOYER WHO DISCHARGES OR DISCRIMINATES AGAINST AN
11 EMPLOYEE BECAUSE THAT EMPLOYEE HAS MADE A COMPLAINT UNDER THIS
12 SECTION, HAS GIVEN INFORMATION TO THE DEPARTMENT IN ACCORDANCE WITH
13 THIS SECTION, HAS CAUSED TO BE INSTITUTED OR IS ABOUT TO CAUSE TO BE
14 INSTITUTED A PROCEEDING UNDER THIS SECTION, OR HAS TESTIFIED OR IS ABOUT
15 TO TESTIFY IN A PROCEEDING, SHALL BE DEEMED IN VIOLATION OF THIS SECTION
16 AND SHALL BE SUBJECT TO A CIVIL PENALTY OF AT LEAST \$2,000 BUT NOT MORE
17 THAN \$10,000 FOR EACH VIOLATION.

18 **Article - Public Utility Companies**

19 9-206.

20 (a) The owner and operator of an intrastate motor bus carrier shall prohibit
21 the smoking of tobacco products while the bus is in public service.

22 (b) A person may not smoke tobacco products on a bus of an intrastate motor
23 bus carrier.

24 (c) The Commission may adopt regulations to carry out the provisions of this
25 section.

26 (d) A person who violates a provision of this section is subject to a civil penalty
27 [not exceeding \$25] OF \$100 FOR THE FIRST VIOLATION AND AT LEAST \$250 FOR
28 EACH SUBSEQUENT VIOLATION.

29 **Article - Transportation**

30 7-705.

31 (b) It is unlawful for any person to engage in any of the following acts in any
32 transit vehicle or transit facility, designed for the boarding of a transit vehicle, which
33 is owned or controlled by the Administration or a train owned or controlled by the
34 Administration or operated by a railroad company under contract to the
35 Administration to provide passenger railroad service:

36 (2) Smoke or carry a lighted or smoldering pipe, cigar, or cigarette;

1 (d) The provisions of subsection (b)(3), (5), (9), and (13) of this section do not
2 apply to charter bus service rendered by the Administration. The provisions of
3 subsection (b)(2) and (13) of this section do not apply to excursion train service
4 rendered by the Administration or by a railroad company under contract to the
5 Administration. The provisions of subsection (b)(3) of this section do not apply to any
6 railroad service rendered by the Administration or by a railroad company under
7 contract to the Administration.

8 (e) Any person who violates any provision of this section is guilty of a
9 misdemeanor and is subject to a fine of not more than \$500 for each offense.

10 SECTION 4. AND BE IT FURTHER ENACTED, That Section(s) 2-106(d) and
11 (e), respectively, of Article - Labor and Employment of the Annotated Code of
12 Maryland be renumbered to be Section(s) 2-106(c) and (d), respectively.

13 SECTION 5. AND BE IT FURTHER ENACTED, That nothing in this Act shall
14 be construed to preempt a county or municipal government from enacting and
15 enforcing additional measures to reduce involuntary exposure to environmental
16 tobacco smoke.

17 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take
18 effect October 1, 2003.