

Department of Legislative Services  
Maryland General Assembly  
2003 Session

FISCAL AND POLICY NOTE

House Bill 771 (Delegate Frush, *et al.*)  
Health and Government Operations

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Clean Indoor Air Act of 2003

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This bill expands the locations 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.

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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 with 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 with existing resources.

**Small Business Effect:** It cannot be reliably determined at this time whether this bill would have a fiscal impact on small businesses.

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Analysis

**Bill Summary:** Individuals may not smoke in indoor areas, including: gymnasiums; child day care facilities; health care facilities; places of employment; common-use areas such as restrooms, lobbies, reception areas, and hallways; food service establishments; bars or taverns; gaming facilities open to the public; indoor sports arenas, including

motor sports speedways; at least 75% of the rented rooms in hotels and motels; bowling alleys, billiard or pool halls; and retirement facilities and nursing homes.

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 also does not apply to: (1) indoor areas where private social functions are being held; (2) limousines under private hire; (3) hotel or motel rooms, as long as the total percentage of rooms for smokers does not exceed 25%; (4) a fundraising activity sponsored by a volunteer fire, ambulance, or rescue company, an auxiliary of a fire company, or a fraternal benefit society in existence by June 1, 2003 if the activity takes place on property owned or leased by June 1, 2003 by those groups; or (5) an indoor area used for a theatrical performance, concert, or film production if environmental tobacco smoke is part of the performance, concert, or film.

Smoking permitted signs must be posted and maintained by the owner, operator, manager, or other person with control over an area where smoking is allowed.

The Department of Health and Mental Hygiene (DHMH) must adopt regulations prohibiting smoking in indoor areas open to the public other than places of employment. DHMH must report to the General Assembly each year by September 30 on the department's enforcement efforts and the results of those efforts to eliminate tobacco smoke in indoor areas open to the public in the prior year.

The bill requires the Department of Labor, Licensing, and Regulation (DLLR) to adopt regulations prohibiting smoking in places of employment. DLLR must report to the General Assembly each year by September 30 on the department's enforcement efforts and the results of those efforts to eliminate tobacco smoke in places of employment in the prior year.

In addition, the bill eliminates a provision allowing the County Commissioners of Frederick County to regulate smoking by designating smoking and nonsmoking areas in public buildings owned, controlled, or financed by the State in the county. The bill also eliminates a provision allowing the County Commissioners of Washington County to regulate smoking in county offices and office buildings.

The civil penalty for smoking in an elevator available to the general public would increase from up to \$25 to \$100 for the first violation and at least \$250 for each subsequent violation.

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.

The penalty for a person who smokes aboard an intrastate bus would increase from not more than \$25 to \$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 a liquor license, and is a bar or tavern; (3) a bar in a hotel or motel; (4) a club that has a liquor 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 a liquor license; or (8) up to 40% of the premises of a fraternal, religious, patriotic, or charitable organization or corporation or 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. Violators are subject to a civil fine of \$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.

Smoking or carrying a lighted or smoldering pipe, cigar, or cigarette is not allowed in a transit vehicle or facility owned or controlled by the Maryland Transit Administration (MTA) or a train owned or controlled by the MTA or operated by a railroad company under an MTA contract. Violators are guilty of a misdemeanor and subject to a fine of up to \$500 for each offense.

**Background:** 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 United States died 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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 261 (Senator Ruben, *et al.*) – Finance.

**Information Source(s):** Cecil County; Montgomery County; Prince George’s County; Harford County; St. Mary’s County; Comptroller’s Office; *Secondhand Smoke and Family Health*, Centers for Disease Control and Prevention; Department of Health and Mental Hygiene; Public Service Commission; Department of Labor, Licensing, and Regulation; Carroll County; Department of Legislative Services

**Fiscal Note History:** First Reader - February 26, 2003  
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