
By: **Delegates Frush, Barkley, Benson, Bobo, Bronrott, Cardin, Conroy, Cryor, Gaines, Goldwater, Gutierrez, Haynes, Healey, Heller, Hubbard, Kelley, Lee, Madaleno, Mandel, Marriott, Menes, Moe, Montgomery, Murray, Nathan-Pulliam, Parker, Patterson, Petzold, Proctor, Rosenberg, Stern, V. Turner, and Vaughn**

Introduced and read first time: February 1, 2005

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Clean Indoor Air Act of 2005**

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

23 BY repealing and reenacting, with amendments,
24 Article 25 - County Commissioners
25 Section 3(jj) and 236B
26 Annotated Code of Maryland
27 (2001 Replacement Volume and 2004 Supplement)

28 BY repealing
29 Article - Business Regulation

1 Section 2-105(d)
2 Annotated Code of Maryland
3 (1998 Replacement Volume and 2004 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article - Health - General
6 Section 24-205
7 Annotated Code of Maryland
8 (2000 Replacement Volume and 2004 Supplement)

9 BY repealing
10 Article - Health - General
11 Section 24-501 through 24-505, inclusive, and the subtitle "Subtitle 5. Tobacco
12 Smoking in Retail Stores"
13 Annotated Code of Maryland
14 (2000 Replacement Volume and 2004 Supplement)

15 BY adding to
16 Article - Health - General
17 Section 24-501 through 24-509, inclusive, to be under the new subtitle "Subtitle
18 5. Clean Indoor Air Act"
19 Annotated Code of Maryland
20 (2000 Replacement Volume and 2004 Supplement)

21 BY repealing
22 Article - Labor and Employment
23 Section 2-106(c) and 5-314(c)
24 Annotated Code of Maryland
25 (1999 Replacement Volume and 2004 Supplement)

26 BY repealing and reenacting, without amendments,
27 Article - Labor and Employment
28 Section 5-101(a), (c), (d), and (g)
29 Annotated Code of Maryland
30 (1999 Replacement Volume and 2004 Supplement)

31 BY adding to
32 Article - Labor and Employment
33 Section 5-608
34 Annotated Code of Maryland
35 (1999 Replacement Volume and 2004 Supplement)

36 BY renumbering
37 Article - Labor and Employment

1 Section 2-106(d) and (e), respectively
 2 to be Section 2-106(c) and (d), respectively
 3 Annotated Code of Maryland
 4 (1999 Replacement Volume and 2004 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article 25 - County Commissioners**

8 3.

9 (jj) The County Commissioners of Frederick County may ADOPT
 10 REGULATIONS OR ENACT LAWS THAT ARE AT LEAST AS STRINGENT AS THE
 11 PROVISIONS OF TITLE 24, SUBTITLE 5 OF THE HEALTH - GENERAL ARTICLE TO
 12 regulate the smoking of tobacco products [by designating smoking and no smoking
 13 areas] in public buildings owned, controlled, or financed by the State of Maryland in
 14 Frederick County.

15 236B.

16 The County Commissioners for Washington County may enact ordinances
 17 [regulating] THAT ARE AT LEAST AS STRINGENT AS THE PROVISIONS OF TITLE 24,
 18 SUBTITLE 5 OF THE HEALTH - GENERAL ARTICLE TO REGULATE smoking in county
 19 offices and county office buildings. [Any ordinance enacted shall assure and provide
 20 for employees and the public to smoke in designated smoking places.]

21 **Article - Business Regulation**

22 2-105.

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

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

29 2. any establishment that:

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

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

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

- 1 (1) Cigar;
- 2 (2) Cigarette;
- 3 (3) Pipe; or
- 4 (4) Other tobacco product of any kind.

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

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

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

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

13 (i) In a facility for the treatment of mental disorders as defined in
14 § 10-101(e) of this article;

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

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

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

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

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

24 [24-501.

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

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

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

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

32 (1) Cigar;

- 1 (2) Cigarette;
- 2 (3) Pipe; or
- 3 (4) Other tobacco product of any kind.

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

6 [24-502.

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

- 8 (1) A restaurant;
- 9 (2) A restaurant area of a retail store;
- 10 (3) A tobacconist;
- 11 (4) A lavatory or restroom in a retail store; or
- 12 (5) A work area of a retail store:
 - 13 (i) To which the public does not have access; and
 - 14 (ii) That can be physically isolated by a room with doors closed.

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

17 [24-503.

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

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

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

- 24 (1) The supervisor complies with the provision of subsection (a) of this
25 section; and
- 26 (2) The public or employees persist in or continue their smoking in a
27 public area.]

28 [24-504.

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

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

3 [24-505.

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

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

9 SUBTITLE 5. CLEAN INDOOR AIR ACT.

10 24-501.

11 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
12 INDICATED.

13 (B) "EMPLOYEE" HAS THE MEANING STATED IN § 5-101 OF THE LABOR AND
14 EMPLOYMENT ARTICLE.

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

17 (D) "ENVIRONMENTAL TOBACCO SMOKE" MEANS THE COMPLEX MIXTURE
18 FORMED FROM THE ESCAPING SMOKE OF A BURNING TOBACCO PRODUCT OR SMOKE
19 EXHALED BY THE SMOKER.

20 (E) "INDOOR AREA OPEN TO THE PUBLIC" MEANS AN INDOOR AREA, OR A
21 PORTION OF AN INDOOR AREA, ACCESSIBLE TO THE PUBLIC BY EITHER INVITATION
22 OR PERMISSION.

23 (F) "PLACE OF EMPLOYMENT" HAS THE MEANING STATED IN § 5-101 OF THE
24 LABOR AND EMPLOYMENT ARTICLE.

25 (G) "SMOKING" MEANS THE BURNING OF A LIGHTED CIGARETTE, CIGAR, PIPE,
26 OR ANY OTHER MATTER OR SUBSTANCE THAT CONTAINS TOBACCO.

27 24-502.

28 IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE STATE PROTECT THE
29 PUBLIC AND EMPLOYEES FROM INVOLUNTARY EXPOSURE TO ENVIRONMENTAL
30 TOBACCO SMOKE IN INDOOR AREAS OPEN TO THE PUBLIC, INDOOR PLACES OF
31 EMPLOYMENT, AND CERTAIN DESIGNATED PRIVATE AREAS.

1 24-503.

2 THE PURPOSE OF THIS SUBTITLE IS TO PRESERVE AND IMPROVE THE HEALTH,
3 COMFORT, AND ENVIRONMENT OF THE PEOPLE OF THE STATE BY LIMITING
4 EXPOSURE TO ENVIRONMENTAL TOBACCO SMOKE.

5 24-504.

6 EXCEPT AS PROVIDED IN § 24-505 OF THIS SUBTITLE, A PERSON MAY NOT
7 SMOKE IN:

8 (1) AN INDOOR AREA OPEN TO THE PUBLIC;

9 (2) AN INDOOR PLACE IN WHICH MEETINGS ARE OPEN TO THE PUBLIC
10 IN ACCORDANCE WITH TITLE 10, SUBTITLE 5 OF THE STATE GOVERNMENT ARTICLE;

11 (3) A GOVERNMENT-OWNED OR -OPERATED MEANS OF MASS
12 TRANSPORTATION INCLUDING BUSES, VANS, TRAINS, TAXICABS, AND LIMOUSINES;
13 OR

14 (4) AN INDOOR PLACE OF EMPLOYMENT.

15 24-505.

16 THIS SUBTITLE DOES NOT APPLY TO:

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

21 (2) A HOTEL OR MOTEL ROOM RENTED TO ONE OR MORE GUESTS AS
22 LONG AS THE TOTAL PERCENTAGE OF HOTEL OR MOTEL ROOMS BEING SO USED
23 DOES NOT EXCEED 25%; OR

24 (3) AN INDOOR AREA BEING USED FOR THE PURPOSE OF A THEATRICAL
25 PERFORMANCE, A MUSICAL CONCERT, OR THE PRODUCTION OF A FILM IF
26 ENVIRONMENTAL TOBACCO SMOKE IS A PART OF THE PERFORMANCE, CONCERT, OR
27 FILM.

28 24-506.

29 (A) (1) SIGNS THAT STATE "SMOKING PERMITTED IN THIS ROOM" SHALL BE
30 PROMINENTLY POSTED AND PROPERLY MAINTAINED WHERE SMOKING IS ALLOWED
31 UNDER § 24-505(2) OF THIS SUBTITLE.

32 (2) SIGNS THAT STATE "WARNING: SMOKING OCCURS AS PART OF THIS
33 PRODUCTION" SHALL BE PROMINENTLY POSTED AND PROPERLY MAINTAINED
34 WHERE SMOKING IS ALLOWED UNDER § 24-505(3) OF THIS SUBTITLE.

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

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

4 24-507.

5 (A) THE DEPARTMENT SHALL ADOPT REGULATIONS THAT PROHIBIT
6 ENVIRONMENTAL TOBACCO SMOKE IN INDOOR AREAS OPEN TO THE PUBLIC.

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

9 (1) THE ENFORCEMENT EFFORTS OF THE DEPARTMENT TO ELIMINATE
10 ENVIRONMENTAL TOBACCO SMOKE IN INDOOR AREAS OPEN TO THE PUBLIC FOR
11 THE PRIOR YEAR; AND

12 (2) THE RESULTS OF THESE ENFORCEMENT EFFORTS.

13 24-508.

14 (A) A PERSON OR EMPLOYER WHO VIOLATES A PROVISION OF THIS SUBTITLE
15 OR A REGULATION ADOPTED UNDER THIS SUBTITLE SHALL BE CONSIDERED IN
16 VIOLATION OF THIS SUBTITLE AND SHALL BE SUBJECT TO A CIVIL PENALTY OF \$100
17 FOR THE FIRST VIOLATION AND AT LEAST \$250 FOR EACH SUBSEQUENT VIOLATION.

18 (B) AN EMPLOYER WHO DISCHARGES OR DISCRIMINATES AGAINST AN
19 EMPLOYEE BECAUSE THAT EMPLOYEE HAS MADE A COMPLAINT, HAS GIVEN
20 INFORMATION TO THE DEPARTMENT IN ACCORDANCE WITH THIS SUBTITLE, HAS
21 CAUSED TO BE INSTITUTED OR IS ABOUT TO CAUSE TO BE INSTITUTED A
22 PROCEEDING UNDER THIS SUBTITLE, OR HAS TESTIFIED OR IS ABOUT TO TESTIFY IN
23 A PROCEEDING UNDER THIS SUBTITLE, SHALL BE DEEMED IN VIOLATION OF THIS
24 SUBTITLE AND SHALL BE SUBJECT TO A CIVIL PENALTY OF AT LEAST \$2,000 BUT NOT
25 MORE THAN \$10,000 FOR EACH VIOLATION.

26 24-509.

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

28 **Article - Labor and Employment**

29 2-106.

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

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

1 is incidental to the consumption of the alcoholic beverages, and the immediately
2 adjacent seating area.

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

6 5-101.

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

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

11 (2) "Employee" includes:

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

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

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

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

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

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

28 (ii) a public body.

29 (2) "Employer" includes:

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

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

1 (iii) a governmental unit or person who contracts directly with
2 another governmental unit or person who engages in a business that directly employs
3 individuals to provide part-time or temporary help to another governmental unit or
4 person.

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

7 5-314.

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

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

14 2. any establishment that:

15 A. is not a restaurant or hotel as defined in Article 2B, §
16 1-102 of the Code;

17 B. possesses an alcoholic beverages license issued under
18 Article 2B of the Code that allows consumption of alcoholic beverages on the premises
19 of the establishment; and

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

21 3. a bar in a hotel or motel;

22 4. a club as defined in Article 2B, § 1-102 of the Code that
23 possesses an alcoholic beverages license issued under Article 2B of the Code and that
24 allows consumption of alcoholic beverages on the premises of the club;

25 5. in the case of a restaurant as defined in Article 2B, §
26 1-102 of the Code:

27 A. if the restaurant does not possess an alcoholic beverages
28 license issued under Article 2B of the Code, a separate enclosed room not to exceed
29 40% of the total area of the restaurant; or

30 B. if the restaurant possesses an alcoholic beverages license
31 issued under Article 2B of the Code, a bar or bar area, a separate enclosed room not
32 exceeding 40% of the restaurant, or a combination of a bar or bar area and a separate
33 enclosed room not exceeding 40% of the total area of the restaurant including the bar
34 or bar area;

35 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 5-608.

21 (A) EXCEPT AS PROVIDED IN § 24-505 OF THE HEALTH - GENERAL ARTICLE, A
22 PERSON MAY NOT SMOKE IN AN INDOOR PLACE OF EMPLOYMENT.

23 (B) THE DEPARTMENT SHALL ADOPT REGULATIONS THAT PROHIBIT
24 ENVIRONMENTAL TOBACCO SMOKE, AS DEFINED IN § 24-501 OF THE HEALTH -
25 GENERAL ARTICLE, IN INDOOR PLACES OF EMPLOYMENT NOT NORMALLY OPEN TO
26 THE GENERAL PUBLIC.

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

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

32 (2) THE RESULTS OF THESE ENFORCEMENT EFFORTS.

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

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

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

6 SECTION 3. AND BE IT FURTHER ENACTED, That nothing in this Act shall
7 be construed to preempt a county or municipal government from enacting and
8 enforcing more stringent measures to reduce involuntary exposure to environmental
9 tobacco smoke.

10 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2005.