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By: **Senators Ruben, Britt, Currie, Forehand, Frosh, Garagiola, Gladden,  
Green, Grosfeld, Jones, Kelley, Kramer, McFadden, Pinsky, and  
Teitelbaum**

Introduced and read first time: January 26, 2006  
Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

2 **Clean Indoor Air Act of 2006**

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 (2005 Replacement Volume)

28 BY repealing  
29 Article - Business Regulation  
30 Section 2-105(d)

1 Annotated Code of Maryland  
2 (2004 Replacement Volume and 2005 Supplement)

3 BY repealing and reenacting, with amendments,  
4 Article - Health - General  
5 Section 24-205  
6 Annotated Code of Maryland  
7 (2005 Replacement Volume and 2005 Supplement)

8 BY repealing  
9 Article - Health - General  
10 Section 24-501 through 24-505, inclusive, and the subtitle "Subtitle 5. Tobacco  
11 Smoking in Retail Stores"  
12 Annotated Code of Maryland  
13 (2005 Replacement Volume and 2005 Supplement)

14 BY adding to  
15 Article - Health - General  
16 Section 24-501 through 24-509, inclusive, to be under the new subtitle "Subtitle  
17 5. Clean Indoor Air Act"  
18 Annotated Code of Maryland  
19 (2005 Replacement Volume and 2005 Supplement)

20 BY repealing  
21 Article - Labor and Employment  
22 Section 2-106(c) and 5-314(c)  
23 Annotated Code of Maryland  
24 (1999 Replacement Volume and 2005 Supplement)

25 BY repealing and reenacting, without amendments,  
26 Article - Labor and Employment  
27 Section 5-101(a), (c), (d), and (g)  
28 Annotated Code of Maryland  
29 (1999 Replacement Volume and 2005 Supplement)

30 BY adding to  
31 Article - Labor and Employment  
32 Section 5-608  
33 Annotated Code of Maryland  
34 (1999 Replacement Volume and 2005 Supplement)

35 BY renumbering  
36 Article - Labor and Employment  
37 Section 2-106(d) and (e), respectively

1 to be Section 2-106(c) and (d), respectively  
 2 Annotated Code of Maryland  
 3 (1999 Replacement Volume and 2005 Supplement)

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

6 **Article 25 - County Commissioners**

7 3.

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

14 236B.

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

20 **Article - Business Regulation**

21 2-105.

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

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

28 2. any establishment that:

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

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

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

35 3. a bar in a hotel or motel;



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

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

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

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

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

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

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

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

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

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

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

23 [24-501.

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

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

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

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

31 (1) Cigar;

32 (2) Cigarette;

1 (3) Pipe; or

2 (4) Other tobacco product of any kind.

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

5 [24-502.

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

7 (1) A restaurant;

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

9 (3) A tobacconist;

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

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

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

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

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

16 [24-503.

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

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

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

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

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

27 [24-504.

28 (a) The Secretary shall adopt rules and regulations to enforce the provisions of  
29 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 GOVERNMENT-OPERATED MEANS OF  
12 MASS TRANSPORTATION INCLUDING BUSES, VANS, TRAINS, TAXICABS, AND  
13 LIMOUSINES; 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, 2006.