

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL 359  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 3, after “products” insert “in certain places”; in line 12, after the first “Act;” insert “requiring that certain moneys be placed in a certain fund; authorizing the Secretary of Health and Mental Hygiene and the Commissioner of Labor and Industry to waive certain penalties under certain circumstances; establishing a certain affirmative defense; providing that an employer who discharges or discriminates against an employee for certain reasons is deemed in violation of certain provisions of law; prohibiting an employee from making certain groundless or malicious complaints or from taking certain actions in bad faith; authorizing the Secretary of Health and Mental Hygiene and the Commissioner of Labor and Industry to bring certain actions against certain persons under certain circumstances;”.

On page 2, in line 1, after “employment;” insert “authorizing the Secretary of Health and Mental Hygiene to grant a certain waiver under certain circumstances;”; in line 3, after “change” insert “; providing for a delayed effective date;”; and in line 29, strike “24-509” and substitute “24-510”.

On page 3, after line 16, insert:

“BY repealing and reenacting, with amendments,  
Article – State Finance and Procurement  
Section 7-317(b)  
Annotated Code of Maryland  
(2006 Replacement Volume and 2006 Supplement)”.

AMENDMENT NO. 2

On page 8, in line 25, strike “AN” and substitute “:”

(Over)

(1) AN”;

and in line 27, after “PERMISSION” insert “;OR

(2) AN INDOOR AREA OF ANY ESTABLISHMENT LICENSED OR PERMITTED UNDER ARTICLE 2B OF THE CODE FOR THE SALE OR POSSESSION OF ALCOHOLIC BEVERAGES”.

On page 10, in line 2, strike “AND AUTOMOBILES,”; in line 3, strike beginning with “FOR” through the second “CARE,” and substitute “BY A PERSON WHO IS LICENSED OR REGISTERED UNDER SUBTITLE 5 OF THE FAMILY LAW ARTICLE TO PROVIDE DAY CARE OR CHILD CARE, AND PRIVATE VEHICLES, UNLESS BEING USED FOR”; in line 7, strike “OR”; and strike beginning with the colon in line 8 down through “TIMES” in line 15 and substitute “DERIVES ITS PRIMARY REVENUE FROM THE SALE OF TOBACCO PRODUCTS AND TOBACCO-RELATED PRODUCTS AND ACCESSORIES AND DERIVES ONLY INCIDENTAL REVENUE FROM THE SALE OF NONTOBACCO-RELATED PRODUCTS;

(4) ANY FACILITY OF A MANUFACTURER, IMPORTER, WHOLESALER, OR DISTRIBUTOR OF TOBACCO PRODUCTS OR OF ANY TOBACCO LEAF DEALER OR PROCESSOR IN WHICH EMPLOYEES OF THE MANUFACTURER, IMPORTER, WHOLESALER, DISTRIBUTOR, OR PROCESSOR WORK OR CONGREGATE; OR

(5) A RESEARCH OR EDUCATIONAL LABORATORY FOR THE PURPOSE OF CONDUCTING SCIENTIFIC RESEARCH INTO THE HEALTH EFFECTS OF TOBACCO SMOKE”.

AMENDMENT NO. 3

On page 11, in line 2, after “REPORT” insert “, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE,”; strike in their entirety lines 8 through 12, inclusive, and substitute:

“(A) SUBJECT TO SUBSECTION (C) OF THIS SECTION AND EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, A PERSON WHO VIOLATES A PROVISION OF THIS SUBTITLE OR A REGULATION ADOPTED UNDER § 24-507(A) OF THIS SUBTITLE:

(1) FOR A FIRST VIOLATION, SHALL BE ISSUED A WRITTEN REPRIMAND BY THE SECRETARY OR THE SECRETARY’S DESIGNEE;

(2) FOR A SECOND VIOLATION, IS SUBJECT TO A CIVIL PENALTY OF \$100; AND

(3) FOR EACH SUBSEQUENT VIOLATION, IS SUBJECT TO A CIVIL PENALTY NOT LESS THAN \$250.

(B) THE SECRETARY MAY WAIVE A PENALTY ESTABLISHED UNDER SUBSECTION (A) OF THIS SECTION, GIVING CONSIDERATION TO FACTORS THAT INCLUDE:

(1) THE SERIOUSNESS OF THE VIOLATION; AND

(2) ANY DEMONSTRATED GOOD FAITH MEASURES TO COMPLY WITH THE PROVISIONS OF THIS SUBTITLE.

(C) (1) THIS SUBSECTION DOES NOT APPLY TO AN ALLEGED VIOLATION OF SUBSECTION (D) OF THIS SECTION.

(Over)

**(2) IT IS AN AFFIRMATIVE DEFENSE TO A COMPLAINT BROUGHT AGAINST A PERSON FOR A VIOLATION OF A PROVISION OF THIS SUBTITLE OR A REGULATION ADOPTED UNDER THIS SUBTITLE THAT THE PERSON OR AN EMPLOYEE OF THE PERSON:**

**(I) POSTED A “NO SMOKING” SIGN AS REQUIRED UNDER § 24-506 OF THIS SUBTITLE;**

**(II) REMOVED ALL ASHTRAYS AND OTHER SMOKING PARAPHERNALIA FROM ALL AREAS WHERE SMOKING IS PROHIBITED; AND**

**(III) IF THE VIOLATION OCCURRED IN A BAR, TAVERN, OR RESTAURANT:**

**1. REFUSED TO SEAT OR SERVE ANY INDIVIDUAL WHO WAS SMOKING IN A PROHIBITED AREA; AND**

**2. IF THE INDIVIDUAL CONTINUED TO SMOKE AFTER AN INITIAL WARNING, ASKED THE INDIVIDUAL TO LEAVE THE ESTABLISHMENT.”;**

in line 13, strike “(B)” and substitute “(D)”; and after line 20, insert:

**“(E) (1) AN EMPLOYEE MAY NOT:**

**(I) MAKE A GROUNDLESS OR MALICIOUS COMPLAINT UNDER THIS SUBTITLE TO THE SECRETARY OR AN AUTHORIZED REPRESENTATIVE OF THE SECRETARY;**

(II) IN BAD FAITH, BRING AN ACTION UNDER THIS SUBTITLE; OR

(III) IN BAD FAITH, TESTIFY IN AN ACTION UNDER THIS SUBTITLE OR A PROCEEDING THAT RELATES TO THE SUBJECT OF THIS SUBTITLE.

(2) THE SECRETARY MAY BRING AN ACTION FOR INJUNCTIVE RELIEF AND DAMAGES AGAINST A PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (1) OF THIS SUBSECTION.

(F) A PENALTY COLLECTED BY THE SECRETARY UNDER THIS SECTION SHALL BE PAID TO THE CIGARETTE RESTITUTION FUND ESTABLISHED UNDER § 7-317 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

24-509.

(A) THE SECRETARY, IN CONSULTATION WITH THE COMPTROLLER, MAY GRANT A WAIVER FROM THE APPLICATION OF A SPECIFIC PROVISION OF THIS SUBTITLE, IF PRIOR TO THE GRANTING OF THE WAIVER, THE APPLICANT FOR A WAIVER ESTABLISHES IN WRITING:

(1) COMPLIANCE WITH A SPECIFIC PROVISION OF THIS SUBTITLE WOULD CAUSE UNDUE FINANCIAL HARDSHIP; OR

(2) THE EXISTENCE OF OTHER FACTORS THAT WOULD RENDER COMPLIANCE UNREASONABLE.

(B) THE SECRETARY MAY IMPOSE CONDITIONS OR RESTRICTIONS ON A WAIVER GRANTED UNDER SUBSECTION (A) OF THIS SECTION TO:

(Over)

(1) MINIMIZE THE ADVERSE EFFECTS OF THE WAIVER ON INDIVIDUALS INVOLUNTARILY EXPOSED TO SECONDHAND SMOKE; AND

(2) ENSURE THAT THE WAIVER IS CONSISTENT WITH THE PURPOSES OF THIS SUBTITLE.

(C) THE SECRETARY SHALL ADOPT REGULATIONS NECESSARY TO IMPLEMENT THIS SECTION.”;

and in line 21, strike “~~24-509.~~” and substitute “24-510.”.

AMENDMENT NO. 4

On page 16, in line 11, after “(B)” insert “(1)”; after line 14, insert:

“(2) SUBJECT TO SUBSECTION (C) OF THIS SECTION, A PERSON WHO VIOLATES A REGULATION ADOPTED UNDER THIS SUBTITLE:

(I) FOR A FIRST VIOLATION, SHALL BE ISSUED A WRITTEN REPRIMAND BY THE COMMISSIONER OR THE COMMISSIONER’S DESIGNEE;

(II) FOR A SECOND VIOLATION, IS SUBJECT TO A CIVIL PENALTY OF \$100; AND

(III) FOR EACH SUBSEQUENT VIOLATION, IS SUBJECT TO A CIVIL PENALTY NOT LESS THAN \$250.

(C) THE COMMISSIONER MAY WAIVE A PENALTY ESTABLISHED UNDER SUBSECTION (B) OF THIS SECTION, GIVING CONSIDERATION TO FACTORS THAT INCLUDE:

(1) THE SERIOUSNESS OF THE VIOLATION; AND

(2) ANY DEMONSTRATED GOOD FAITH MEASURES TO COMPLY WITH THE PROVISIONS OF THIS SUBTITLE.

(D) A PENALTY COLLECTED BY THE COMMISSIONER UNDER THIS SECTION SHALL BE PAID TO THE CIGARETTE RESTITUTION FUND ESTABLISHED UNDER § 7-317 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.”;

in line 15, strike “(C)” and substitute “(E)”; in line 16, after “REPORT” insert “, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE,”; in line 22, strike “(D)” and substitute “(F)”; and after line 29, insert:

“(G) (1) AN EMPLOYEE MAY NOT:

(I) MAKE A GROUNDLESS OR MALICIOUS COMPLAINT TO THE COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER;

(II) IN BAD FAITH, BRING AN ACTION UNDER THIS SUBTITLE; OR

(III) IN BAD FAITH, TESTIFY IN AN ACTION UNDER THIS SUBTITLE OR A PROCEEDING THAT RELATES TO THE SUBJECT OF THIS SUBTITLE.

(2) THE COMMISSIONER MAY BRING AN ACTION FOR INJUNCTIVE RELIEF AND DAMAGES AGAINST A PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (1) OF THIS SUBSECTION.

(Over)

Article – State Finance and Procurement

7-317.

(b) (1) The Fund is a continuing, nonlapsing fund that is not subject to § 7-302 of this subtitle.

(2) There shall be credited to the Fund all revenues consisting of funds received by the State from any source resulting, directly or indirectly, from any judgment against or settlement with tobacco product manufacturers, tobacco research associations, or any other person in the tobacco industry relating to litigation, administrative proceedings, or any other claims made or prosecuted by the State to recover damages for violations of State law.

**(3) THERE SHALL BE CREDITED TO THE FUND ALL MONEYS COLLECTED UNDER § 24-508 OF THE HEALTH – GENERAL ARTICLE OR § 5-608 OF THE LABOR AND EMPLOYMENT ARTICLE.**

AMENDMENT NO. 5

On page 17, in line 9, strike “October 1, 2007” and substitute “January 1, 2008”.