

HOUSE BILL 78

J1, C2

71r0787

By: **Delegate Cardin**

Introduced and read first time: January 22, 2007

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Environmental Tobacco Smoke Elimination and Waiver Act**

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;
9 authorizing smoking in certain bars and restaurants if the owner has a certain
10 waiver; providing that a separate waiver is required for each bar or restaurant,
11 that a waiver is not transferable, and that a waiver is effective for a certain
12 period of time; providing that a certain section does not apply to certain counties
13 under certain circumstances; requiring the Department of Health and Mental
14 Hygiene to determine the number of waivers for sale in certain counties in
15 collaboration with certain county governments; providing that the number of
16 waivers for sale may not exceed a certain percentage of bars and restaurants in
17 a certain county; requiring that the number of waivers for sale decrease over a
18 certain period of time; requiring the Department of Health and Mental Hygiene
19 to conduct a certain number of auctions to sell certain waivers in certain
20 counties during certain fiscal years; providing for a certain calculation for
21 payment of certain waivers; requiring that the Department of Health and
22 Mental Hygiene pay the money from the sale of waivers to a certain fund;
23 prohibiting the Department of Health and Mental Hygiene from awarding
24 waivers after a certain date; requiring certain owners to provide certain notice
25 to and receive certain statements from certain employees before implementing
26 certain waivers; requiring the posting of certain signs; requiring the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Department of Health and Mental Hygiene to adopt certain regulations and
2 collaborate with certain local health departments; requiring the Department of
3 Health and Mental Hygiene to report to the General Assembly regarding
4 certain provisions of this Act; establishing certain penalties for certain
5 violations of this Act; prohibiting smoking in certain places of employment;
6 requiring the Department of Labor, Licensing, and Regulation to adopt certain
7 regulations; requiring the Department of Labor, Licensing, and Regulation to
8 report to the General Assembly regarding the enforcement efforts and the effect
9 of the efforts by the Department of Labor, Licensing, and Regulation;
10 establishing certain penalties for certain violations in certain places of
11 employment; defining certain terms; declaring that nothing in this Act shall be
12 construed to preempt a certain entity from enacting and enforcing certain
13 measures; making a stylistic change; and generally relating to the prohibition of
14 smoking in indoor areas open to the public and indoor places of employment.

15 BY repealing and reenacting, with amendments,
16 Article 25 – County Commissioners
17 Section 3(jj) and 236B
18 Annotated Code of Maryland
19 (2005 Replacement Volume and 2006 Supplement)

20 BY repealing
21 Article – Business Regulation
22 Section 2–105(d)
23 Annotated Code of Maryland
24 (2004 Replacement Volume and 2006 Supplement)

25 BY adding to
26 Article – Business Regulation
27 Section 2–105(d)
28 Annotated Code of Maryland
29 (2004 Replacement Volume and 2006 Supplement)

30 BY repealing and reenacting, with amendments,
31 Article – Health – General
32 Section 24–205
33 Annotated Code of Maryland
34 (2005 Replacement Volume and 2006 Supplement)

35 BY repealing
36 Article – Health – General
37 Section 24–501 through 24–505 and the subtitle “Subtitle 5. Tobacco Smoking
38 in Retail Stores”

1 Annotated Code of Maryland
2 (2005 Replacement Volume and 2006 Supplement)

3 BY adding to
4 Article – Health – General
5 Section 24–501 through 24–510 to be under the new subtitle “Subtitle 5.
6 Environmental Tobacco Smoke Elimination and Waiver Act”
7 Annotated Code of Maryland
8 (2005 Replacement Volume and 2006 Supplement)

9 BY repealing
10 Article – Labor and Employment
11 Section 2–106(c) and 5–314(c)
12 Annotated Code of Maryland
13 (1999 Replacement Volume and 2006 Supplement)

14 BY adding to
15 Article – Labor and Employment
16 Section 2–106(c), 5–314(c), and 5–608
17 Annotated Code of Maryland
18 (1999 Replacement Volume and 2006 Supplement)

19 BY repealing and reenacting, without amendments,
20 Article – Labor and Employment
21 Section 5–101(a), (c), (d), and (g)
22 Annotated Code of Maryland
23 (1999 Replacement Volume and 2006 Supplement)

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

26 **Article 25 – County Commissioners**

27 3.

28 (jj) The County Commissioners of Frederick County may **ADOPT**
29 **REGULATIONS OR ENACT LAWS THAT ARE AT LEAST AS STRINGENT AS THE**
30 **PROVISIONS OF TITLE 24, SUBTITLE 5 OF THE HEALTH – GENERAL ARTICLE TO**
31 regulate the smoking of tobacco products [by designating smoking and no smoking
32 areas] in public buildings owned, controlled, or financed by the State of Maryland in
33 Frederick County.

1 236B.

2 The County Commissioners for Washington County may enact ordinances
3 [regulating] **THAT ARE AT LEAST AS STRINGENT AS THE PROVISIONS OF TITLE**
4 **24, SUBTITLE 5 OF THE HEALTH – GENERAL ARTICLE TO REGULATE** smoking in
5 county offices and county office buildings. [Any ordinance enacted shall assure and
6 provide for employees and the public to smoke in designated smoking places.]

7 **Article – Business Regulation**

8 2–105.

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

12 1. any portion of a private residence which is not open to
13 the 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
23 that possesses an alcoholic beverages license issued under Article 2B of the Code and
24 that 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
28 beverages license issued under Article 2B of the Code, a separate enclosed room not to
29 exceed 40% of the total area of the restaurant; or

1 B. if the restaurant possesses an alcoholic beverages
2 license issued under Article 2B of the Code, a bar or bar area, a separate enclosed
3 room not exceeding 40% of the restaurant, or a combination of a bar or bar area and a
4 separate enclosed room not exceeding 40% of the total area of the restaurant including
5 the bar or bar area;

6 6. up to 40% of the sleeping rooms in a hotel or motel;

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

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

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

18 (2) For the purposes of paragraph (1)(i)5B of this subsection, “bar or
19 bar area” means an area within a restaurant that is devoted to the serving of alcoholic
20 beverages for consumption by guests on the premises and in which the serving of food
21 is incidental to the consumption of the alcoholic beverages, and the immediately
22 adjacent seating area.

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

26 **(D) THE SMOKING OF TOBACCO PRODUCTS IS PERMITTED IN**
27 **ACCORDANCE WITH TITLE 24, SUBTITLE 5 OF THE HEALTH – GENERAL**
28 **ARTICLE.**

29 **Article – Health – General**

30 24–205.

1 (a) In this section, “smoking” means the act of smoking or carrying a
2 burning:

3 (1) Cigar;

4 (2) Cigarette;

5 (3) Pipe; or

6 (4) Other tobacco product of any kind.

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

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

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

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

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

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

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

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

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

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

26 [24–501.

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

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

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

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

8 (1) Cigar;

9 (2) Cigarette;

10 (3) Pipe; or

11 (4) Other tobacco product of any kind.

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

14 [24-502.

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

16 (1) A restaurant;

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

18 (3) A tobacconist;

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

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

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

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

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

1 [24-503.

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

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

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

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

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

12 [24-504.

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

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

17 [24-505.

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

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

23 **SUBTITLE 5. ENVIRONMENTAL TOBACCO SMOKE ELIMINATION AND WAIVER**
24 **ACT.**

25 **24-501.**

26 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
27 **INDICATED.**

1 **(B) “BAR” MEANS AN ESTABLISHMENT THAT IS LICENSED UNDER**
2 **ARTICLE 2B OF THE CODE AND IS GENERALLY RECOGNIZED AS A BAR OR**
3 **TAVERN.**

4 **(C) “EMPLOYEE” HAS THE MEANING STATED IN § 5-101 OF THE LABOR**
5 **AND EMPLOYMENT ARTICLE.**

6 **(D) “EMPLOYER” HAS THE MEANING STATED IN § 5-101 OF THE LABOR**
7 **AND EMPLOYMENT ARTICLE.**

8 **(E) “ENVIRONMENTAL TOBACCO SMOKE” MEANS THE COMPLEX**
9 **MIXTURE FORMED FROM THE ESCAPING SMOKE OF A BURNING TOBACCO**
10 **PRODUCT OR SMOKE EXHALED BY THE SMOKER.**

11 **(F) “INDOOR AREA OPEN TO THE PUBLIC” MEANS AN INDOOR AREA OR**
12 **A PORTION OF AN INDOOR AREA ACCESSIBLE TO THE PUBLIC BY EITHER**
13 **INVITATION OR PERMISSION.**

14 **(G) “OCCUPANT CAPACITY” MEANS THE MAXIMUM NUMBER OF**
15 **INDIVIDUALS ALLOWED IN A BAR OR RESTAURANT AT THE SAME TIME AS**
16 **DETERMINED BY THE OCCUPANCY PERMIT FOR THE BAR OR RESTAURANT.**

17 **(G) “PLACE OF EMPLOYMENT” HAS THE MEANING STATED IN § 5-101**
18 **OF THE LABOR AND EMPLOYMENT ARTICLE.**

19 **(H) “RESTAURANT” MEANS A FOOD ESTABLISHMENT LICENSED UNDER**
20 **§ 21-305 OF THIS ARTICLE THAT IS GENERALLY RECOGNIZED AS A**
21 **RESTAURANT.**

22 **(I) “SMOKING” MEANS THE BURNING OF A LIGHTED CIGARETTE,**
23 **CIGAR, PIPE, OR ANY OTHER MATTER OR SUBSTANCE THAT CONTAINS TOBACCO.**

24 **(J) “WAIVER” MEANS A ENVIRONMENTAL TOBACCO SMOKE WAIVER**
25 **AWARDED UNDER THIS SUBTITLE.**

26 **24-502.**

1 **IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE STATE**
2 **PROTECT THE PUBLIC AND EMPLOYEES FROM INVOLUNTARY EXPOSURE TO**
3 **ENVIRONMENTAL TOBACCO SMOKE IN INDOOR AREAS OPEN TO THE PUBLIC,**
4 **INDOOR PLACES OF EMPLOYMENT, AND CERTAIN DESIGNATED PRIVATE AREAS**
5 **WITHOUT CAUSING A BAR OR RESTAURANT TO BECOME INSOLVENT.**

6 **24-503.**

7 **THE PURPOSE OF THIS SUBTITLE IS TO:**

8 **(1) PRESERVE AND IMPROVE THE HEALTH, COMFORT, AND**
9 **ENVIRONMENT OF THE PEOPLE OF THE STATE BY LIMITING EXPOSURE TO**
10 **ENVIRONMENTAL TOBACCO SMOKE; AND**

11 **(2) PHASE OUT INVOLUNTARY EXPOSURE TO ENVIRONMENTAL**
12 **TOBACCO SMOKE IN BARS AND RESTAURANTS THROUGH A WAIVER PROCESS.**

13 **24-504.**

14 **EXCEPT AS PROVIDED IN §§ 24-505 AND 24-506 OF THIS SUBTITLE, A**
15 **PERSON MAY NOT SMOKE IN:**

16 **(1) AN INDOOR AREA OPEN TO THE PUBLIC;**

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

20 **(3) A GOVERNMENT-OWNED OR GOVERNMENT-OPERATED**
21 **MEANS OF MASS TRANSPORTATION INCLUDING BUSES, VANS, TRAINS,**
22 **TAXICABS, AND LIMOUSINES; OR**

23 **(4) AN INDOOR PLACE OF EMPLOYMENT.**

24 **24-505.**

25 **THIS SUBTITLE DOES NOT APPLY TO:**

26 **(1) PRIVATE HOMES, RESIDENCES, INCLUDING RESIDENCES**
27 **USED AS A BUSINESS OR PLACE OF EMPLOYMENT, AND AUTOMOBILES, UNLESS**

1 BEING USED FOR CHILD CARE, DAY CARE, THE PUBLIC TRANSPORTATION OF
2 CHILDREN, OR AS PART OF HEALTH CARE OR DAY CARE TRANSPORTATION;

3 (2) A HOTEL OR MOTEL ROOM RENTED TO ONE OR MORE GUESTS
4 AS LONG AS THE TOTAL PERCENT OF HOTEL OR MOTEL ROOMS BEING SO USED
5 DOES NOT EXCEED 25%;

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

10 (4) A RETAIL TOBACCO SHOP THAT:

11 (I) DERIVES AT LEAST 75% OF ITS REVENUES, MEASURED
12 BY AVERAGE DAILY RECEIPTS, FROM THE SALE OF NONCIGARETTE TOBACCO
13 PRODUCTS;

14 (II) HAS A VENTILATION SYSTEM THAT PREVENTS SMOKE
15 FROM INFILTRATING INTO ANY AREA WHERE SMOKING IS PROHIBITED UNDER
16 THIS SUBTITLE; AND

17 (III) PROHIBITS THE ENTRY OF MINORS AT ALL TIMES.

18 **24-506.**

19 (A) (1) A PERSON MAY SMOKE IN A BAR OR RESTAURANT IF THE
20 OWNER OF THE BAR OR RESTAURANT HAS A CURRENT ENVIRONMENTAL
21 TOBACCO SMOKE WAIVER.

22 (2) A SEPARATE WAIVER IS REQUIRED FOR EACH BAR OR
23 RESTAURANT.

24 (3) A WAIVER IS NOT TRANSFERABLE.

25 (4) A WAIVER SHALL BE EFFECTIVE FOR 1 YEAR.

26 (B) (1) THIS SECTION DOES NOT APPLY TO A COUNTY THAT
27 PROHIBITS SMOKING IN BARS AND RESTAURANTS.

1 **(2) THIS SECTION DOES NOT PREEMPT A COUNTY FROM**
2 **PROHIBITING SMOKING IN BARS AND RESTAURANTS.**

3 **(C) (1) THE DEPARTMENT SHALL DETERMINE THE NUMBER OF**
4 **WAIVERS FOR SALE IN EACH COUNTY IN COLLABORATION WITH THE**
5 **APPROPRIATE COUNTY GOVERNMENT.**

6 **(2) THE NUMBER OF WAIVERS FOR SALE IN EACH COUNTY:**

7 **(I) MAY NOT EXCEED 10% OF THE TOTAL NUMBER OF BARS**
8 **AND RESTAURANTS IN THE COUNTY; AND**

9 **(II) SHALL DECREASE IN NUMBER OVER A PERIOD OF 10**
10 **YEARS.**

11 **(D) (1) IN EACH FISCAL YEAR 2008 THROUGH 2018, THE**
12 **DEPARTMENT SHALL CONDUCT TWO AUCTIONS TO SELL WAIVERS IN EACH**
13 **COUNTY.**

14 **(2) (I) ONE AUCTION SHALL BE FOR BARS AND RESTAURANTS**
15 **WITH AN OCCUPANT CAPACITY BELOW THE MEDIAN OCCUPANT CAPACITY FOR**
16 **BARS AND RESTAURANTS IN THE COUNTY.**

17 **(II) ONE AUCTION SHALL BE FOR BARS AND RESTAURANTS**
18 **WITH AN OCCUPANT CAPACITY AT OR ABOVE THE MEDIAN OCCUPANT CAPACITY**
19 **FOR BARS AND RESTAURANTS IN THE COUNTY.**

20 **(3) (I) OWNERS OF A BAR OR RESTAURANT SHALL BID FOR**
21 **ONE PERSON TO SMOKE IN THE BAR OR RESTAURANT.**

22 **(II) THE WAIVER SHALL BE AWARDED TO THE HIGHEST**
23 **BIDDER.**

24 **(III) THE OWNER AWARDED THE WAIVER SHALL PAY THE**
25 **AMOUNT OF THE HIGHEST BID TIMES THE OCCUPANT CAPACITY OF THE BAR OR**
26 **RESTAURANT.**

1 **(4) THE DEPARTMENT SHALL PAY ALL MONEY COLLECTED**
2 **UNDER THIS SECTION TO THE CIGARETTE RESTITUTION FUND.**

3 **(5) THE DEPARTMENT MAY NOT AWARD A WAIVER AFTER MAY**
4 **31, 2018.**

5 **(E) BEFORE THE OWNER OF A BAR OR RESTAURANT MAY IMPLEMENT A**
6 **WAIVER, THE OWNER SHALL:**

7 **(1) INFORM EACH EMPLOYEE OF THE SMOKING POLICY OF THE**
8 **BAR OR RESTAURANT; AND**

9 **(2) OBTAIN A WRITTEN STATEMENT FROM EACH EMPLOYEE**
10 **DECLARING THAT THE EMPLOYEE:**

11 **(I) IS A SMOKER; OR**

12 **(II) UNDERSTANDS THE SMOKING POLICY AND**
13 **VOLUNTARILY ASSUMES THE RISK OF WORKING IN A BAR OR RESTAURANT**
14 **WHERE SMOKING IS PERMITTED.**

15 **24-507.**

16 **(A) SIGNS THAT STATE “SMOKING PERMITTED IN THIS ROOM” SHALL**
17 **BE PROMINENTLY POSTED AND PROPERLY MAINTAINED WHERE SMOKING IS**
18 **ALLOWED UNDER §§ 24-505(2) AND 24-506 OF THIS SUBTITLE.**

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

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

22 **24-508.**

23 **(A) TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE, THE**
24 **DEPARTMENT SHALL:**

25 **(1) ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS OF**
26 **THIS SUBTITLE; AND**

1 2-106.

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

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

8 2. any establishment that:

9 A. is not a restaurant or hotel as defined in Article 2B, §
10 1-102 of the Code;

11 B. possesses an alcoholic beverages license issued under
12 Article 2B of the Code that allows consumption of alcoholic beverages on the premises
13 of the establishment; and

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

15 3. a bar in a hotel or motel;

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

19 5. in the case of a restaurant as defined in Article 2B, §
20 1-102 of the Code:

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

24 B. if the restaurant possesses an alcoholic beverages
25 license issued under Article 2B of the Code, a bar or bar area, a separate enclosed
26 room not exceeding 40% of the restaurant, or a combination of a bar or bar area and a
27 separate enclosed room not exceeding 40% of the total area of the restaurant including
28 the bar or bar area;

29 6. up to 40% of the sleeping rooms in a hotel or motel;

1 7. a separate enclosed room of an establishment other
2 than an establishment specified in items 1 through 6 of this subparagraph that
3 possesses an alcoholic beverages license issued under Article 2B of the Code that
4 allows 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
10 under 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
13 bar 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
18 an establishment described in paragraph (1) of this subsection may restrict or prohibit
19 smoking on the premises of the establishment.]

20 **(C) THE SMOKING OF TOBACCO PRODUCTS IS PERMITTED IN**
21 **ACCORDANCE WITH TITLE 24, SUBTITLE 5 OF THE HEALTH – GENERAL**
22 **ARTICLE.**

23 5–101.

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

25 (c) (1) “Employee” means, except as provided in § 5–401 of this title, an
26 individual whom an employer employs, for a wage or other compensation, in the
27 business of the employer.

28 (2) “Employee” includes:

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

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

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

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

12 (d) (1) “Employer” means:

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

16 (ii) a public body.

17 (2) “Employer” includes:

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

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

24 (iii) a governmental unit or person who contracts directly with
25 another governmental unit or person who engages in a business that directly employs
26 individuals to provide part-time or temporary help to another governmental unit or
27 person.

28 (g) “Place of employment” means a place in or about which an employee is
29 allowed to work.

30 5-314.

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

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

7 2. any establishment that:

8 A. is not a restaurant or hotel as defined in Article 2B, §
9 1–102 of the Code;

10 B. possesses an alcoholic beverages license issued under
11 Article 2B of the Code that allows consumption of alcoholic beverages on the premises
12 of the establishment; and

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

14 3. a bar in a hotel or motel;

15 4. a club as defined in Article 2B, § 1–102 of the Code
16 that possesses an alcoholic beverages license issued under Article 2B of the Code and
17 that allows consumption of alcoholic beverages on the premises of the club;

18 5. in the case of a restaurant as defined in Article 2B, §
19 1–102 of the Code:

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

23 B. if the restaurant possesses an alcoholic beverages
24 license issued under Article 2B of the Code, a bar or bar area, a separate enclosed
25 room not exceeding 40% of the restaurant, or a combination of a bar or bar area and a
26 separate enclosed room not exceeding 40% of the total area of the restaurant including
27 the bar or bar area;

28 6. up to 40% of the sleeping rooms in a hotel or motel;

29 7. a separate enclosed room of an establishment other
30 than an establishment specified in items 1 through 6 of this subparagraph that

1 possesses an alcoholic beverages license issued under Article 2B of the Code that
2 allows consumption of alcoholic beverages on the premises of the establishment; or

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

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

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

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

18 (C) **THE SMOKING OF TOBACCO PRODUCTS IS PERMITTED IN**
19 **ACCORDANCE WITH TITLE 24, SUBTITLE 5 OF THE HEALTH – GENERAL**
20 **ARTICLE.**

21 **5-608.**

22 (A) **EXCEPT AS PROVIDED IN §§ 24-505 AND 24-506 OF THE HEALTH –**
23 **GENERAL ARTICLE, AN INDIVIDUAL MAY NOT SMOKE IN AN INDOOR PLACE OF**
24 **EMPLOYMENT.**

25 (B) **THE DEPARTMENT SHALL ADOPT REGULATIONS IN ACCORDANCE**
26 **WITH TITLE 24, SUBTITLE 5 OF THE HEALTH – GENERAL ARTICLE.**

27 (C) **ON OR BEFORE MAY 31 OF EACH YEAR, THE DEPARTMENT SHALL**
28 **REPORT TO THE GENERAL ASSEMBLY ON:**

29 (1) **THE ENFORCEMENT EFFORTS OF THE DEPARTMENT TO**
30 **ELIMINATE ENVIRONMENTAL TOBACCO SMOKE, IN ACCORDANCE WITH TITLE**

1 **24, SUBTITLE 5 OF THE HEALTH – GENERAL ARTICLE, IN INDOOR PLACES OF**
2 **EMPLOYMENT DURING THE PRIOR YEAR; AND**

3 **(2) THE RESULTS OF THESE ENFORCEMENT EFFORTS.**

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

12 SECTION 2. AND BE IT FURTHER ENACTED, That nothing in this Act shall
13 be construed to preempt a county or municipal government from enacting and
14 enforcing more stringent measures to reduce involuntary exposure to environmental
15 tobacco smoke.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 June 1, 2007.