

# HOUSE BILL 359

J1

(71r0882)

## ENROLLED BILL

— Economic Matters / Finance —

Introduced by **Delegates Frush, Ali, Anderson, Aumann, Barkley, Barnes, Barve, Beidle, Benson, Bobo, Braveboy, Bronrott, Cane, Cardin, Carter, V. Clagett, Doory, Dumais, Elmore, Gaines, Gilchrist, Glenn, Goldwater, Griffith, Gutierrez, Guzzone, Haynes, Healey, Hecht, Heller, Holmes, Howard, Hubbard, Hucker, Ivey, Jones, Kach, N. King, Krebs, Kullen, Lafferty, Lawton, Lee, Manno, McIntosh, Mizeur, Montgomery, Morhaim, Murphy, Nathan-Pulliam, Niemann, Pena-Melnyk, Pendergrass, Proctor, Ramirez, Rice, Rosenberg, Ross, Schuh, Simmons, Stein, Stukes, Taylor, F. Turner, V. Turner, Valderrama, Vaughn, and Waldstreicher**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Clean Indoor Air Act of 2007**

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics indicate opposite chamber / conference committee amendments.*



1 FOR the purpose of prohibiting a person from smoking tobacco products in certain  
 2 places except under certain circumstances; authorizing certain counties to  
 3 regulate smoking under certain circumstances; repealing certain provisions of  
 4 law concerning tobacco smoking in retail stores; declaring the intent of the  
 5 General Assembly; stating the purpose of certain provisions of this Act;  
 6 prohibiting a person from smoking in indoor areas open to the public, beginning  
 7 on a certain date, except under certain circumstances; requiring the posting of  
 8 certain signs; requiring the Department of Health and Mental Hygiene to adopt  
 9 certain regulations; requiring the Department of Health and Mental Hygiene to  
 10 report to the General Assembly regarding certain provisions of this Act;  
 11 requiring that certain moneys be placed in a certain fund; authorizing the  
 12 Secretary of Health and Mental Hygiene and the Commissioner of Labor and  
 13 Industry to waive certain penalties under certain circumstances before a certain  
 14 date; providing that a certain waiver terminates on a certain date; establishing a  
 15 certain affirmative defense; providing that an employer who discharges or  
 16 discriminates against an employee for certain reasons is deemed in violation of  
 17 certain provisions of law; prohibiting an employee from making certain  
 18 groundless or malicious complaints or from taking certain actions in bad faith;  
 19 authorizing the Secretary of Health and Mental Hygiene and the Commissioner  
 20 of Labor and Industry to bring certain actions against certain persons under  
 21 certain circumstances; establishing certain penalties for certain violations of  
 22 this Act; prohibiting smoking in certain places of employment; requiring the  
 23 Department of Labor, Licensing, and Regulation to adopt certain regulations;  
 24 requiring the Department of Labor, Licensing, and Regulation to report to the  
 25 General Assembly regarding the enforcement efforts and the effect of the efforts  
 26 by the Department of Labor, Licensing, and Regulation; establishing certain  
 27 penalties for certain violations in certain places of employment; authorizing the  
 28 Secretary of Health and Mental Hygiene health officer of a county to grant a  
 29 certain waiver under certain circumstances; defining certain terms; ~~declaring~~  
 30 ~~that nothing in this Act shall~~ providing that certain provisions of law may not  
 31 be construed to preempt a certain entity from enacting and enforcing certain  
 32 measures; making a stylistic change; ~~providing for a delayed effective date;~~ and  
 33 generally relating to the prohibition of smoking in indoor areas open to the  
 34 public and indoor places of employment.

35 BY repealing and reenacting, with amendments,  
 36 Article 25 – County Commissioners  
 37 Section 3(jj) and 236B  
 38 Annotated Code of Maryland  
 39 (2005 Replacement Volume and 2006 Supplement)

40 BY repealing  
 41 Article – Business Regulation

1 Section 2-105(d)  
2 Annotated Code of Maryland  
3 (2004 Replacement Volume and 2006 Supplement)

4 BY repealing and reenacting, with amendments,  
5 Article – Health – General  
6 Section 24-205  
7 Annotated Code of Maryland  
8 (2005 Replacement Volume and 2006 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 (2005 Replacement Volume and 2006 Supplement)

15 BY adding to  
16 Article – Health – General  
17 Section 24-501 through ~~24-509~~ ~~24-510~~ 24-511, inclusive, to be under the new  
18 subtitle “Subtitle 5. Clean Indoor Air Act”  
19 Annotated Code of Maryland  
20 (2005 Replacement Volume and 2006 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 2006 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 2006 Supplement)

31 BY adding to  
32 Article – Labor and Employment  
33 Section 5-608  
34 Annotated Code of Maryland  
35 (1999 Replacement Volume and 2006 Supplement)

36 BY renumbering

1 Article – Labor and Employment  
 2 Section 2–106(d) and (e), respectively  
 3 to be Section 2–106(c) and (d), respectively  
 4 Annotated Code of Maryland  
 5 (1999 Replacement Volume and 2006 Supplement)

6 BY repealing and reenacting, with amendments,  
 7 Article – State Finance and Procurement  
 8 Section 7–317(b)  
 9 Annotated Code of Maryland  
 10 (2006 Replacement Volume and 2006 Supplement)

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

13 **Article 25 – County Commissioners**

14 3.

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

21 236B.

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

27 **Article – Business Regulation**

28 2–105.

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

- 1                           1.     any portion of a private residence which is not open to  
2     the public for business purposes;
- 3                           2.     any establishment that:
  - 4                           A.     is not a restaurant or hotel as defined in Article 2B, §  
5     1–102 of the Code;
  - 6                           B.     possesses an alcoholic beverages license issued under  
7     Article 2B of the Code that allows consumption of alcoholic beverages on the premises  
8     of the establishment; and
  - 9                           C.     is generally recognized as a bar or tavern;
- 10                          3.     a bar in a hotel or motel;
- 11                          4.     a club as defined in Article 2B, § 1–102 of the Code  
12     that possesses an alcoholic beverages license issued under Article 2B of the Code and  
13     that allows consumption of alcoholic beverages on the premises of the club;
- 14                          5.     in the case of a restaurant as defined in Article 2B, §  
15     1–102 of the Code:
  - 16                          A.     if the restaurant does not possess an alcoholic  
17     beverages license issued under Article 2B of the Code, a separate enclosed room not to  
18     exceed 40% of the total area of the restaurant; or
  - 19                          B.     if the restaurant possesses an alcoholic beverages  
20     license issued under Article 2B of the Code, a bar or bar area, a separate enclosed  
21     room not exceeding 40% of the restaurant, or a combination of a bar or bar area and a  
22     separate enclosed room not exceeding 40% of the total area of the restaurant including  
23     the bar or bar area;
- 24                          6.     up to 40% of the sleeping rooms in a hotel or motel;
- 25                          7.     a separate enclosed room of an establishment other  
26     than an establishment specified in items 1 through 6 of this subparagraph that  
27     possesses an alcoholic beverages license issued under Article 2B of the Code that  
28     allows consumption of alcoholic beverages on the premises of the establishment; or
- 29                          8.     up to 40% of the premises of a fraternal, religious,  
30     patriotic, or charitable organization or corporation or fire company or rescue squad

1 that is subject to the authority of the Secretary during an event that the organization  
2 or corporation holds on its own property and which is open to the public.

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

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

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

#### 14 **Article - Health - General**

15 24–205.

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

18 (1) Cigar;

19 (2) Cigarette;

20 (3) Pipe; or

21 (4) Other tobacco product of any kind.

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

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

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



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

3 [24-502.

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

5 (1) A restaurant;

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

7 (3) A tobacconist;

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

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

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

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

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

14 [24-503.

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

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

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

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

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

25 [24-504.



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

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

5 [24-505.

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

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

#### 11 **SUBTITLE 5. CLEAN INDOOR AIR ACT.**

#### 12 **24-501.**

13 (A) **IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
14 **INDICATED.**

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

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

19 (D) **“ENVIRONMENTAL TOBACCO SMOKE” MEANS THE COMPLEX**  
20 **MIXTURE FORMED FROM THE ESCAPING SMOKE OF A BURNING TOBACCO**  
21 **PRODUCT OR SMOKE EXHALED BY THE SMOKER.**

22 (E) **“INDOOR AREA OPEN TO THE PUBLIC” MEANS ~~AN~~:**

23 **(1) AN INDOOR AREA OR A PORTION OF AN INDOOR AREA**  
24 **ACCESSIBLE TO THE PUBLIC BY EITHER INVITATION OR PERMISSION; OR**

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

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

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

5 **24-502.**

6 IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE STATE  
7 PROTECT THE PUBLIC AND EMPLOYEES FROM INVOLUNTARY EXPOSURE TO  
8 ENVIRONMENTAL TOBACCO SMOKE IN INDOOR AREAS OPEN TO THE PUBLIC,  
9 INDOOR PLACES OF EMPLOYMENT, AND CERTAIN DESIGNATED PRIVATE AREAS.

10 **24-503.**

11 THE PURPOSE OF THIS SUBTITLE IS TO PRESERVE AND IMPROVE THE  
12 HEALTH, COMFORT, AND ENVIRONMENT OF THE PEOPLE OF THE STATE BY  
13 LIMITING EXPOSURE TO ENVIRONMENTAL TOBACCO SMOKE.

14 **24-504.**

15 EXCEPT AS PROVIDED IN § 24-505 OF THIS SUBTITLE, BEGINNING ON  
16 FEBRUARY 1, 2008, A PERSON MAY NOT SMOKE IN:

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

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

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

24 (4) AN INDOOR PLACE OF EMPLOYMENT.

25 **24-505.**

26 THIS SUBTITLE DOES NOT APPLY TO:

1 (1) PRIVATE HOMES, RESIDENCES, INCLUDING RESIDENCES  
2 USED AS A BUSINESS OR PLACE OF EMPLOYMENT, ~~AND AUTOMOBILES,~~ UNLESS  
3 BEING USED ~~FOR CHILD CARE, DAY CARE,~~ BY A PERSON WHO IS LICENSED OR  
4 REGISTERED UNDER SUBTITLE 5 OF THE FAMILY LAW ARTICLE TO PROVIDE  
5 DAY CARE OR CHILD CARE, AND PRIVATE VEHICLES, UNLESS BEING USED FOR  
6 THE PUBLIC TRANSPORTATION OF CHILDREN, OR AS PART OF HEALTH CARE OR  
7 DAY CARE TRANSPORTATION;

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

11 (3) A RETAIL TOBACCO SHOP THAT:

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

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

18 ~~(III) PROHIBITS THE ENTRY OF MINORS AT ALL TIMES~~  
19 ~~DERIVES ITS PRIMARY REVENUE FROM THE SALE OF TOBACCO PRODUCTS AND~~  
20 ~~TOBACCO RELATED PRODUCTS AND ACCESSORIES AND DERIVES ONLY~~  
21 ~~INCIDENTAL REVENUE FROM THE SALE OF NONTOBACCO RELATED PRODUCTS~~  
22 ~~BUSINESS THAT IS A SOLE PROPRIETORSHIP, LIMITED LIABILITY COMPANY,~~  
23 ~~CORPORATION, PARTNERSHIP, OR OTHER ENTERPRISE, IN WHICH:~~

24 ~~(I) THE PRIMARY ACTIVITY IS THE RETAIL SALE OF~~  
25 ~~TOBACCO PRODUCTS AND ACCESSORIES; AND~~

26 ~~(II) THE SALE OF OTHER PRODUCTS IS INCIDENTAL;~~

27 (4) ANY FACILITY OF A MANUFACTURER, IMPORTER,  
28 WHOLESALE, OR DISTRIBUTOR OF TOBACCO PRODUCTS OR OF ANY TOBACCO  
29 LEAF DEALER OR PROCESSOR IN WHICH EMPLOYEES OF THE MANUFACTURER,  
30 IMPORTER, WHOLESALE, DISTRIBUTOR, OR PROCESSOR WORK OR  
31 CONGREGATE; OR

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

4 **24-506.**

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

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

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

11 **24-507.**

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

14           **(B) ON OR BEFORE SEPTEMBER 30 OF EACH YEAR, THE DEPARTMENT**  
15 **SHALL REPORT, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT**  
16 **ARTICLE, TO THE GENERAL ASSEMBLY ON:**

17                   **(1) THE ENFORCEMENT EFFORTS OF THE DEPARTMENT TO**  
18 **ELIMINATE ENVIRONMENTAL TOBACCO SMOKE IN INDOOR AREAS OPEN TO THE**  
19 **PUBLIC DURING THE PRIOR YEAR; AND**

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

21 **24-508.**

22           ~~**(A) A PERSON OR EMPLOYER WHO VIOLATES A PROVISION OF THIS**~~  
23 ~~**SUBTITLE OR A REGULATION ADOPTED UNDER THIS SUBTITLE SHALL BE**~~  
24 ~~**CONSIDERED IN VIOLATION OF THIS SUBTITLE AND SHALL BE SUBJECT TO A**~~  
25 ~~**CIVIL PENALTY OF \$100 FOR THE FIRST VIOLATION AND AT LEAST \$250 FOR**~~  
26 ~~**EACH SUBSEQUENT VIOLATION.**~~

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

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

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

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

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

14            (1) THE SERIOUSNESS OF THE VIOLATION; AND

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

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

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

23            (I) POSTED A "NO SMOKING" SIGN AS REQUIRED UNDER §  
24 24-506 OF THIS SUBTITLE;

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

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

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

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

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

14           **(E) (1) AN EMPLOYEE MAY NOT:**

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

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

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

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

26                   **(F) A PENALTY COLLECTED BY THE SECRETARY UNDER THIS SECTION**  
27 **SHALL BE PAID TO THE CIGARETTE RESTITUTION FUND ESTABLISHED UNDER §**  
28 **7-317 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**

29 **24-509.**

1        (A) THE SECRETARY, IN CONSULTATION WITH THE COMPTROLLER,  
2 WITHIN 90 DAYS FROM THE RECEIPT OF AN APPLICATION FOR A WAIVER AND  
3 THE DATE THAT ALL CONDITIONS FOR THE APPLICATION FOR A WAIVER  
4 REQUIRED IN THE REGULATIONS ADOPTED BY THE SECRETARY HAVE BEEN  
5 SATISFIED, THE HEALTH OFFICER OF A COUNTY MAY GRANT A WAIVER FROM  
6 THE APPLICATION OF A SPECIFIC PROVISION OF THIS SUBTITLE, IF PRIOR TO  
7 THE GRANTING OF THE WAIVER, THE APPLICANT FOR A WAIVER ESTABLISHES  
8 IN WRITING:

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

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

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

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

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

19        (C) THE SECRETARY SHALL ADOPT REGULATIONS NECESSARY TO  
20 IMPLEMENT THIS SECTION.

21        (D) (1) A WAIVER MAY NOT BE GRANTED UNDER SUBSECTION (A) OF  
22 THIS SECTION ON OR AFTER JANUARY 31, 2011.

23            (2) A WAIVER GRANTED UNDER SUBSECTION (A) OF THIS SECTION  
24 TERMINATES ON JANUARY 31, 2011.

25 ~~24-509.~~ 24-510.

26        NOTHING IN THIS SUBTITLE SHALL BE CONSTRUED TO PREEMPT A  
27 COUNTY OR MUNICIPAL GOVERNMENT FROM ENACTING AND ENFORCING MORE  
28 STRINGENT MEASURES TO REDUCE INVOLUNTARY EXPOSURE TO  
29 ENVIRONMENTAL TOBACCO SMOKE.

1 24-511.

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

3 **Article – Labor and Employment**

4 2-106.

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

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

11 2. any establishment that:

12 A. is not a restaurant or hotel as defined in Article 2B, §  
13 1-102 of the Code;

14 B. possesses an alcoholic beverages license issued under  
15 Article 2B of the Code that allows consumption of alcoholic beverages on the premises  
16 of the establishment; and

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

18 3. a bar in a hotel or motel;

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

22 5. in the case of a restaurant as defined in Article 2B, §  
23 1-102 of the Code:

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

27 B. if the restaurant possesses an alcoholic beverages  
28 license issued under Article 2B of the Code, a bar or bar area, a separate enclosed



1 room not exceeding 40% of the restaurant, or a combination of a bar or bar area and a  
2 separate enclosed room not exceeding 40% of the total area of the restaurant including  
3 the bar or bar area;

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

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

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

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

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

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

24 5–101.

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

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

29 (2) “Employee” includes:

30 (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 **5-608.**

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

22 (B) **(1) THE DEPARTMENT SHALL ADOPT REGULATIONS THAT**  
23 **PROHIBIT ENVIRONMENTAL TOBACCO SMOKE, AS DEFINED IN § 24-501 OF THE**  
24 **HEALTH – GENERAL ARTICLE, IN INDOOR PLACES OF EMPLOYMENT NOT**  
25 **NORMALLY OPEN TO THE GENERAL PUBLIC.**

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

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

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

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

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

6                   **(1) THE SERIOUSNESS OF THE VIOLATION; AND**

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

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

12           ~~**(E)**~~ **(E) ON OR BEFORE SEPTEMBER 30 OF EACH YEAR, THE**  
13 **DEPARTMENT SHALL REPORT, IN ACCORDANCE WITH § 2-1246 OF THE STATE**  
14 **GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY ON:**

15                   **(1) THE ENFORCEMENT EFFORTS OF THE DEPARTMENT TO**  
16 **ELIMINATE ENVIRONMENTAL TOBACCO SMOKE, AS DEFINED IN § 24-501 OF THE**  
17 **HEALTH - GENERAL ARTICLE, IN INDOOR PLACES OF EMPLOYMENT DURING**  
18 **THE PRIOR YEAR; AND**

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

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

28           **(G) (1) AN EMPLOYEE MAY NOT:**

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

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

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

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

12 Article - State Finance and Procurement

13 7-317.

14 (b) (1) The Fund is a continuing, nonlapsing fund that is not subject to §  
 15 7-302 of this subtitle.

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

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

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

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

1           SECTION ~~4. 3.~~ AND BE IT FURTHER ENACTED, That this Act shall take  
2 effect ~~October 1, 2007~~ ~~January 1, 2008~~ October 1, 2007.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.