

HOUSE BILL 359

J1

71r0882
CF SB 91

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**

Introduced and read first time: February 2, 2007

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 20, 2007

CHAPTER _____

1 AN ACT concerning

2 **Clean Indoor Air Act of 2007**

3 FOR the purpose of prohibiting a person from smoking tobacco products in certain
4 places except under certain circumstances; authorizing certain counties to
5 regulate smoking under certain circumstances; repealing certain provisions of
6 law concerning tobacco smoking in retail stores; declaring the intent of the
7 General Assembly; stating the purpose of certain provisions of this Act;
8 prohibiting a person from smoking in indoor areas open to the public except
9 under certain circumstances; requiring the posting of certain signs; requiring
10 the Department of Health and Mental Hygiene to adopt certain regulations;
11 requiring the Department of Health and Mental Hygiene to report to the
12 General Assembly regarding certain provisions of this Act; requiring that

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.



1 certain moneys be placed in a certain fund; authorizing the Secretary of Health
2 and Mental Hygiene and the Commissioner of Labor and Industry to waive
3 certain penalties under certain circumstances; establishing a certain affirmative
4 defense; providing that an employer who discharges or discriminates against an
5 employee for certain reasons is deemed in violation of certain provisions of law;
6 prohibiting an employee from making certain groundless or malicious
7 complaints or from taking certain actions in bad faith; authorizing the Secretary
8 of Health and Mental Hygiene and the Commissioner of Labor and Industry to
9 bring certain actions against certain persons under certain circumstances;
10 establishing certain penalties for certain violations of this Act; prohibiting
11 smoking in certain places of employment; requiring the Department of Labor,
12 Licensing, and Regulation to adopt certain regulations; requiring the
13 Department of Labor, Licensing, and Regulation to report to the General
14 Assembly regarding the enforcement efforts and the effect of the efforts by the
15 Department of Labor, Licensing, and Regulation; establishing certain penalties
16 for certain violations in certain places of employment; authorizing the Secretary
17 of Health and Mental Hygiene to grant a certain waiver under certain
18 circumstances; defining certain terms; declaring that nothing in this Act shall
19 be construed to preempt a certain entity from enacting and enforcing certain
20 measures; making a stylistic change; providing for a delayed effective date; and
21 generally relating to the prohibition of smoking in indoor areas open to the
22 public and indoor places of 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 and 2006 Supplement)

28 BY repealing
29 Article – Business Regulation
30 Section 2–105(d)
31 Annotated Code of Maryland
32 (2004 Replacement Volume and 2006 Supplement)

33 BY repealing and reenacting, with amendments,
34 Article – Health – General
35 Section 24–205
36 Annotated Code of Maryland
37 (2005 Replacement Volume and 2006 Supplement)

38 BY repealing
39 Article – Health – General

1 Section 24–501 through 24–505, inclusive, and the subtitle “Subtitle 5. Tobacco
2 Smoking in Retail Stores”
3 Annotated Code of Maryland
4 (2005 Replacement Volume and 2006 Supplement)

5 BY adding to
6 Article – Health – General
7 Section 24–501 through ~~24–509~~ 24–510, inclusive, to be under the new subtitle
8 “Subtitle 5. Clean Indoor Air Act”
9 Annotated Code of Maryland
10 (2005 Replacement Volume and 2006 Supplement)

11 BY repealing
12 Article – Labor and Employment
13 Section 2–106(c) and 5–314(c)
14 Annotated Code of Maryland
15 (1999 Replacement Volume and 2006 Supplement)

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

21 BY adding to
22 Article – Labor and Employment
23 Section 5–608
24 Annotated Code of Maryland
25 (1999 Replacement Volume and 2006 Supplement)

26 BY renumbering
27 Article – Labor and Employment
28 Section 2–106(d) and (e), respectively
29 to be Section 2–106(c) and (d), respectively
30 Annotated Code of Maryland
31 (1999 Replacement Volume and 2006 Supplement)

32 BY repealing and reenacting, with amendments,
33 Article – State Finance and Procurement
34 Section 7–317(b)
35 Annotated Code of Maryland
36 (2006 Replacement Volume and 2006 Supplement)

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

3 **Article 25 – County Commissioners**

4 3.

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

11 236B.

12 The County Commissioners for Washington County may enact ordinances
13 [regulating] **THAT ARE AT LEAST AS STRINGENT AS THE PROVISIONS OF TITLE**
14 **24, SUBTITLE 5 OF THE HEALTH – GENERAL ARTICLE TO REGULATE** smoking in
15 county offices and county office buildings. [Any ordinance enacted shall assure and
16 provide for employees and the public to smoke in designated smoking places.]

17 **Article – Business Regulation**

18 2–105.

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

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

24 2. any establishment that:

25 A. is not a restaurant or hotel as defined in Article 2B, §
26 1–102 of the Code;

27 B. possesses an alcoholic beverages license issued under
28 Article 2B of the Code that allows consumption of alcoholic beverages on the premises
29 of the establishment; and

- 1 C. is generally recognized as a bar or tavern;
- 2 3. a bar in a hotel or motel;
- 3 4. a club as defined in Article 2B, § 1–102 of the Code
4 that possesses an alcoholic beverages license issued under Article 2B of the Code and
5 that allows consumption of alcoholic beverages on the premises of the club;
- 6 5. in the case of a restaurant as defined in Article 2B, §
7 1–102 of the Code:
- 8 A. if the restaurant does not possess an alcoholic
9 beverages license issued under Article 2B of the Code, a separate enclosed room not to
10 exceed 40% of the total area of the restaurant; or
- 11 B. if the restaurant possesses an alcoholic beverages
12 license issued under Article 2B of the Code, a bar or bar area, a separate enclosed
13 room not exceeding 40% of the restaurant, or a combination of a bar or bar area and a
14 separate enclosed room not exceeding 40% of the total area of the restaurant including
15 the bar or bar area;
- 16 6. up to 40% of the sleeping rooms in a hotel or motel;
- 17 7. a separate enclosed room of an establishment other
18 than an establishment specified in items 1 through 6 of this subparagraph that
19 possesses an alcoholic beverages license issued under Article 2B of the Code that
20 allows consumption of alcoholic beverages on the premises of the establishment; or
- 21 8. up to 40% of the premises of a fraternal, religious,
22 patriotic, or charitable organization or corporation or fire company or rescue squad
23 that is subject to the authority of the Secretary during an event that the organization
24 or corporation holds on its own property and which is open to the public.
- 25 (ii) A separate enclosed room in which smoking is permitted
26 under subparagraph (i) of this paragraph is not required to have a specially modified
27 ventilation system for the room.
- 28 (2) For the purposes of paragraph (1)(i)5B of this subsection, “bar or
29 bar area” means an area within a restaurant that is devoted to the serving of alcoholic
30 beverages for consumption by guests on the premises and in which the serving of food
31 is incidental to the consumption of the alcoholic beverages, and the immediately
32 adjacent seating area.

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

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

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

6 [24-501.

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

8 (b) “Public area” means a room or a portion of a room or other area to which
9 the public has ready access.

10 (c) “Retail store” means any establishment employing 20 or more full-time
11 persons whose primary purpose is to sell to consumers any goods, wares, food for
12 consumption off the premises, or merchandise.

13 (d) “Smoking” means the act of smoking or carrying a burning:

14 (1) Cigar;

15 (2) Cigarette;

16 (3) Pipe; or

17 (4) Other tobacco product of any kind.

18 (e) “Supervisor” means the person who controls, governs, or directs the
19 activities in a retail store.]

20 [24-502.

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

22 (1) A restaurant;

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

24 (3) A tobacconist;

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

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

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

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

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

7 [24-503.

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

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

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

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

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

18 [24-504.

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

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

23 [24-505.

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

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

3 **SUBTITLE 5. CLEAN INDOOR AIR ACT.**

4 **24-501.**

5 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.

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

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

11 (D) "ENVIRONMENTAL TOBACCO SMOKE" MEANS THE COMPLEX
12 MIXTURE FORMED FROM THE ESCAPING SMOKE OF A BURNING TOBACCO
13 PRODUCT OR SMOKE EXHALED BY THE SMOKER.

14 (E) "INDOOR AREA OPEN TO THE PUBLIC" MEANS ~~AN~~:

15 (1) AN INDOOR AREA OR A PORTION OF AN INDOOR AREA
16 ACCESSIBLE TO THE PUBLIC BY EITHER INVITATION OR PERMISSION; OR

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

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

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

24 **24-502.**

25 IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE STATE
26 PROTECT THE PUBLIC AND EMPLOYEES FROM INVOLUNTARY EXPOSURE TO

1 ENVIRONMENTAL TOBACCO SMOKE IN INDOOR AREAS OPEN TO THE PUBLIC,
2 INDOOR PLACES OF EMPLOYMENT, AND CERTAIN DESIGNATED PRIVATE AREAS.

3 **24-503.**

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

7 **24-504.**

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

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

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

14 (3) A GOVERNMENT-OWNED OR GOVERNMENT-OPERATED
15 MEANS OF MASS TRANSPORTATION INCLUDING BUSES, VANS, TRAINS,
16 TAXICABS, AND LIMOUSINES; OR

17 (4) AN INDOOR PLACE OF EMPLOYMENT.

18 **24-505.**

19 THIS SUBTITLE DOES NOT APPLY TO:

20 (1) PRIVATE HOMES, RESIDENCES, INCLUDING RESIDENCES
21 USED AS A BUSINESS OR PLACE OF EMPLOYMENT, ~~AND AUTOMOBILES,~~ UNLESS
22 BEING USED ~~FOR CHILD CARE, DAY CARE,~~ BY A PERSON WHO IS LICENSED OR
23 REGISTERED UNDER SUBTITLE 5 OF THE FAMILY LAW ARTICLE TO PROVIDE
24 DAY CARE OR CHILD CARE, AND PRIVATE VEHICLES, UNLESS BEING USED FOR
25 THE PUBLIC TRANSPORTATION OF CHILDREN, OR AS PART OF HEALTH CARE OR
26 DAY CARE TRANSPORTATION;

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

4 (3) A RETAIL TOBACCO SHOP THAT:

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

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

11 ~~(III) PROHIBITS THE ENTRY OF MINORS AT ALL TIMES~~
12 DERIVES ITS PRIMARY REVENUE FROM THE SALE OF TOBACCO PRODUCTS AND
13 TOBACCO-RELATED PRODUCTS AND ACCESSORIES AND DERIVES ONLY
14 INCIDENTAL REVENUE FROM THE SALE OF NONTOBACCO-RELATED PRODUCTS;

15 (4) ANY FACILITY OF A MANUFACTURER, IMPORTER,
16 WHOLESALE, OR DISTRIBUTOR OF TOBACCO PRODUCTS OR OF ANY TOBACCO
17 LEAF DEALER OR PROCESSOR IN WHICH EMPLOYEES OF THE MANUFACTURER,
18 IMPORTER, WHOLESALE, DISTRIBUTOR, OR PROCESSOR WORK OR
19 CONGREGATE; OR

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

23 **24-506.**

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

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

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

1 **24-507.**

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

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

7 (1) THE ENFORCEMENT EFFORTS OF THE DEPARTMENT TO
8 ELIMINATE ENVIRONMENTAL TOBACCO SMOKE IN INDOOR AREAS OPEN TO THE
9 PUBLIC DURING THE PRIOR YEAR; AND

10 (2) THE RESULTS OF THESE ENFORCEMENT EFFORTS.

11 **24-508.**

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

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

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

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

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

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

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

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

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

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

10 **(I) POSTED A "NO SMOKING" SIGN AS REQUIRED UNDER §**
11 **24-506 OF THIS SUBTITLE;**

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

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

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

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

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

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

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

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 SECRETARY 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 (F) A PENALTY COLLECTED BY THE SECRETARY UNDER THIS SECTION
13 SHALL BE PAID TO THE CIGARETTE RESTITUTION FUND ESTABLISHED UNDER §
14 7-317 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

15 24-509.

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

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

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

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

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

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

3 **(C) THE SECRETARY SHALL ADOPT REGULATIONS NECESSARY TO**
4 **IMPLEMENT THIS SECTION.**

5 ~~24-509.~~ **24-510.**

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

7 **Article – Labor and Employment**

8 2–106.

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

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

15 2. any establishment that:

16 A. is not a restaurant or hotel as defined in Article 2B, §
17 1–102 of the Code;

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

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

22 3. a bar in a hotel or motel;

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

26 5. in the case of a restaurant as defined in Article 2B, §
27 1–102 of the Code;

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

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

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

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

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

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

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

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

29 5–101.

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

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

4 (2) “Employee” includes:

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

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

9 (iii) an individual who is employed for part–time or temporary
10 help by a governmental unit or person who engages in a business that directly employs
11 individuals to provide part–time or temporary help to another governmental unit or
12 person; and

13 (iv) an individual who performs work for a governmental unit or
14 person to whom the individual is provided by another governmental unit or person
15 who engages in a business that directly employs individuals to provide part–time or
16 temporary help.

17 (d) (1) “Employer” means:

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

21 (ii) a public body.

22 (2) “Employer” includes:

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

26 (ii) a governmental unit or person who engages in a business
27 that directly employs individuals to provide part–time or temporary help to another
28 governmental unit or person; and

29 (iii) a governmental unit or person who contracts directly with
30 another governmental unit or person who engages in a business that directly employs

1 individuals to provide part-time or temporary help to another governmental unit or
2 person.

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

5 5-314.

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

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

12 2. any establishment that:

13 A. is not a restaurant or hotel as defined in Article 2B, §
14 1-102 of the Code;

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

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

19 3. a bar in a hotel or motel;

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

23 5. in the case of a restaurant as defined in Article 2B, §
24 1-102 of the Code:

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

28 B. if the restaurant possesses an alcoholic beverages
29 license issued under Article 2B of the Code, a bar or bar area, a separate enclosed
30 room not exceeding 40% of the restaurant, or a combination of a bar or bar area and a

1 separate enclosed room not exceeding 40% of the total area of the restaurant including
2 the bar or bar area;

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

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

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

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

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

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

23 **5-608.**

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

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

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

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

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

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

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

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

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

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

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

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

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

24 ~~(D)~~ **(F) AN EMPLOYER WHO DISCHARGES OR DISCRIMINATES**
25 **AGAINST AN EMPLOYEE BECAUSE THAT EMPLOYEE HAS MADE A COMPLAINT**
26 **UNDER THIS SECTION, HAS GIVEN INFORMATION TO THE DEPARTMENT IN**
27 **ACCORDANCE WITH THIS SECTION, HAS CAUSED TO BE INSTITUTED OR IS ABOUT**
28 **TO CAUSE TO BE INSTITUTED A PROCEEDING UNDER THIS SECTION, OR HAS**
29 **TESTIFIED OR IS ABOUT TO TESTIFY IN A PROCEEDING, SHALL BE DEEMED IN**

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

3 (G) (1) AN EMPLOYEE MAY NOT:

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

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

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

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

15 Article – State Finance and Procurement

16 7-317.

17 (b) (1) The Fund is a continuing, nonlapsing fund that is not subject to §
 18 7-302 of this subtitle.

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

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

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

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.