

## CHAPTER 502

(House Bill 359)

AN ACT concerning

### Clean Indoor Air Act of 2007

FOR the purpose of prohibiting a person from smoking tobacco products in certain places except under certain circumstances; authorizing certain counties to regulate smoking under certain circumstances; repealing certain provisions of law concerning tobacco smoking in retail stores; declaring the intent of the General Assembly; stating the purpose of certain provisions of this Act; prohibiting a person from smoking in indoor areas open to the public, beginning on a certain date, except under certain circumstances; requiring the posting of certain signs; requiring the Department of Health and Mental Hygiene to adopt certain regulations; requiring the Department of Health and Mental Hygiene to report to the General Assembly regarding certain provisions of this Act; requiring that certain moneys be placed in a certain fund; authorizing the Secretary of Health and Mental Hygiene and the Commissioner of Labor and Industry to waive certain penalties under certain circumstances before a certain date; providing that a certain waiver terminates on a certain date; establishing a certain affirmative defense; providing that an employer who discharges or discriminates against an employee for certain reasons is deemed in violation of certain provisions of law; prohibiting an employee from making certain groundless or malicious complaints or from taking certain actions in bad faith; authorizing the Secretary of Health and Mental Hygiene and the Commissioner of Labor and Industry to bring certain actions against certain persons under certain circumstances; establishing certain penalties for certain violations of this Act; prohibiting smoking in certain places of employment; requiring the Department of Labor, Licensing, and Regulation to adopt certain regulations; requiring the Department of Labor, Licensing, and Regulation to report to the General Assembly regarding the enforcement efforts and the effect of the efforts by the Department of Labor, Licensing, and Regulation; establishing certain penalties for certain violations in certain places of employment; authorizing the Secretary of Health and Mental Hygiene health officer of a county to grant a certain waiver under certain circumstances; defining certain terms; ~~declaring that nothing in this Act shall~~ providing that certain provisions of law may not be construed to preempt a certain entity from enacting and enforcing certain measures; making a stylistic change; ~~providing for a delayed effective date~~; and

generally relating to the prohibition of smoking in indoor areas open to the public and indoor places of employment.

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

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

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

BY repealing  
Article – Health – General  
Section 24–501 through 24–505, inclusive, and the subtitle “Subtitle 5. Tobacco Smoking in Retail Stores”  
Annotated Code of Maryland  
(2005 Replacement Volume and 2006 Supplement)

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

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

BY repealing and reenacting, without amendments,

Article – Labor and Employment  
Section 5–101(a), (c), (d), and (g)  
Annotated Code of Maryland  
(1999 Replacement Volume and 2006 Supplement)

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

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

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

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

### **Article 25 – County Commissioners**

3.

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

236B.

The County Commissioners for Washington County may enact ordinances [regulating] **THAT ARE AT LEAST AS STRINGENT AS THE PROVISIONS OF TITLE**

**24, SUBTITLE 5 OF THE HEALTH – GENERAL ARTICLE TO REGULATE** smoking in county offices and county office buildings. [Any ordinance enacted shall assure and provide for employees and the public to smoke in designated smoking places.]

**Article – Business Regulation**

2–105.

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

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

2. any establishment that:

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

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

C. is generally recognized as a bar or tavern;

3. a bar in a hotel or motel;

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

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

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

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

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

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

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

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

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

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

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

### **Article – Health – General**

24–205.

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

(1) Cigar;

(2) Cigarette;

(3) Pipe; or

(4) Other tobacco product of any kind.

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

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

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

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

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

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

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

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

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

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

**[24-501.**

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

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

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

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

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

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

[24-502.

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

- (1) A restaurant;
- (2) A restaurant area of a retail store;
- (3) A tobacconist;
- (4) A lavatory or restroom in a retail store; or
- (5) A work area of a retail store:
  - (i) To which the public does not have access; and
  - (ii) That can be physically isolated by a room with doors closed.

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

[24-503.

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

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

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

- (1) The supervisor complies with the provision of subsection (a) of this section; and
- (2) The public or employees persist in or continue their smoking in a public area.]

[24–504.

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

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

[24–505.

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

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

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

**24–501.**

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

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

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

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

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

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

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

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

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

24-502.

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

24-503.

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

24-504.

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

(1) AN INDOOR AREA OPEN TO THE PUBLIC;

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

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

(4) AN INDOOR PLACE OF EMPLOYMENT.

**24-505.**

**THIS SUBTITLE DOES NOT APPLY TO:**

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

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

(3) A RETAIL TOBACCO ~~SHOP THAT:~~

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

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

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

**BUSINESS THAT IS A SOLE PROPRIETORSHIP, LIMITED LIABILITY COMPANY, CORPORATION, PARTNERSHIP, OR OTHER ENTERPRISE, IN WHICH:**

**(I) THE PRIMARY ACTIVITY IS THE RETAIL SALE OF TOBACCO PRODUCTS AND ACCESSORIES; AND**

**(II) THE SALE OF OTHER PRODUCTS IS INCIDENTAL;**

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

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

**24-506.**

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

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

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

**24-507.**

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

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

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

(2) THE RESULTS OF THESE ENFORCEMENT EFFORTS.

24-508.

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

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

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

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

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

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

(1) THE SERIOUSNESS OF THE VIOLATION; AND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24-509.

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

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

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

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

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

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

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

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

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

**24-509, 24-510.**

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

**24-511.**

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

### **Article – Labor and Employment**

**2-106.**

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

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

2. any establishment that:

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

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

C. is generally recognized as a bar or tavern;

3. a bar in a hotel or motel;

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

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

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

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

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

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

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

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

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

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

5–101.

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

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

(2) “Employee” includes:

(i) an individual whom a governmental unit employs;

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

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

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

(d) (1) “Employer” means:

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

(ii) a public body.

(2) “Employer” includes:

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

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

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

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

5–314.

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

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

2. any establishment that:

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

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

C. is generally recognized as a bar or tavern;

3. a bar in a hotel or motel;

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

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

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

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

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

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

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

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

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

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

**5–608.**

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

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

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

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

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

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

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

(1) THE SERIOUSNESS OF THE VIOLATION; AND

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

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

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

(1) THE ENFORCEMENT EFFORTS OF THE DEPARTMENT TO ELIMINATE ENVIRONMENTAL TOBACCO SMOKE, AS DEFINED IN § 24-501 OF THE

**HEALTH – GENERAL ARTICLE, IN INDOOR PLACES OF EMPLOYMENT DURING THE PRIOR YEAR; AND**

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

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

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

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

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

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

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

**Article – State Finance and Procurement**

**7-317.**

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

**(2) There shall be credited to the Fund all revenues consisting of funds received by the State from any source resulting, directly or indirectly, from any judgment against or settlement with tobacco product manufacturers, tobacco research**

associations, or any other person in the tobacco industry relating to litigation, administrative proceedings, or any other claims made or prosecuted by the State to recover damages for violations of State law.

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

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

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

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

**Approved by the Governor, May 17, 2007.**