

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE

House Bill 850  
Economic Matters

(Delegate Minnick, *et al.*)

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**Baltimore County - Smoking Ban - Exception for Open-Air Structures with  
Temporary Covering**

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This bill provides that in Baltimore County, decks, patios, porches, tents, or other open-air structures of a bar or restaurant – even when the structures are enclosed on all sides or protected by temporary walls, windows, or doorways or other temporary covering – are exempt from the statewide smoking prohibition law.

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**Fiscal Summary**

**State Effect:** None.

**Local Effect:** Baltimore County expenditures related to additional inspections could increase by about \$50,000 annually beginning in FY 2009.

**Small Business Effect:** Minimal overall, but a potentially meaningful effect on small business restaurants and bars in Baltimore County that derive business from customers who smoke.

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**Analysis**

**Current Law/Background:** Statute prohibits a person from smoking in • an indoor area open to the public; • an indoor place in which meetings are open to the public; • a government-owned or operated means of mass transportation; or • an indoor place of employment.

Exceptions to the prohibition are made for the following areas • private homes, residences, including residences used as a business or place of employment, unless being used by a person who is licensed or registered 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; • 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%; • a retail tobacco business that is a sole proprietorship, limited liability company, corporation, partnership, or other enterprise in which the primary activity is the retail sale of tobacco products and accessories and the sale of other products is incidental; • 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 • a research or educational laboratory for the purpose of conducting scientific research into the health effects of tobacco smoke.

DHMH regulations define an “indoor area” as all space in a structure or building with a ceiling that is enclosed on all sides by any combination of permanent or temporary walls, windows, or doorways, whether open or closed, or other physical barriers extending from the floor to ceiling. Smoking outside of an establishment is not covered under regulations, whether on an open deck, outside an entrance to an establishment, or on a sidewalk in front of a building. However, if a deck is fully enclosed with a roof but has open windows, it would still meet the definition of an “indoor area open to the public.”

**Local Fiscal Effect:** Exempting certain decks, patios, porches, tents, or other open-air structures of a bar or restaurant from the statewide smoking ban could complicate enforcement in Baltimore County. Local inspectors would likely have to inspect the additional exempted areas to ensure they meet the requirements under the bill. While Baltimore County advises that some of the inspections could be handled with existing staff and resources, an additional sanitarian would probably be needed at an annual cost of approximately \$50,000 to conduct inspections not handled by existing staff. Therefore, expenditures related to the hiring of one additional sanitarian and subsequent inspection costs would increase in fiscal 2009 and future years.

**Small Business Effect:** Restaurants or bars in Baltimore County that have decks, patios, porches, tents, or other open-air structures that are exempted from the statewide smoking ban under the bill *and* derive business from customers who smoke could see an increase in revenues in fiscal 2009 and future years. Conversely, restaurants and bars in Baltimore County that do not have areas exempted under the bill *and* derive business from

customers who smoke could see a decrease in revenues in fiscal 2009 and future years due to a loss of smoking clientele to bars and restaurants in Baltimore County with exemptions.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 829 (Senator Stone, *et al.*) – Finance.

**Information Source(s):** Baltimore County, Department of Health and Mental Hygiene,  
Department of Legislative Services

**Fiscal Note History:** First Reader - February 21, 2008  
mcp/hlb

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