

**Department of Legislative Services**  
Maryland General Assembly  
2009 Session

**FISCAL AND POLICY NOTE**

House Bill 1483

(Delegate Vaughn, *et al.*)

Economic Matters

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**Indoor Smoking Prohibition - Exception - Cigar Bars**

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This bill adds a cigar bar that is located in a professional sports venue and that generates at least 10% of its total annual gross revenue, or at least \$5,000 in annual sales from the sale of cigars, to the list of areas exempted from the statewide smoking prohibition. However, the cigar bar must meet specific requirements and prohibit the smoking of all tobacco products except cigars on the premises.

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**Fiscal Summary**

**State Effect:** The bill does not materially affect governmental finances since the number of cigar bars located in professional sports venues is expected to be small.

**Local Effect:** None.

**Small Business Effect:** Minimal overall, but meaningful for a cigar bar owner who operates in a professional sports venue under the bill.

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**Analysis**

**Current Law:** 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.

The health officer of a county may grant a waiver from a specific provision of the smoking ban if the applicant establishes in writing that complying with a specific provision of the waiver would cause undue financial hardship or other factors would render compliance unreasonable. The waiver must be granted within 90 days from receipt of a waiver application and the date that all conditions for the waiver application have been satisfied, as required by regulations adopted by the Secretary of Health and Mental Hygiene. Once granted, a waiver terminates January 31, 2011. A waiver may not be granted on or after January 31, 2011. The Secretary may impose conditions or restrictions on a waiver to minimize the adverse effects of the waiver on individuals exposed to secondhand smoke and ensure the waiver is consistent with the smoking ban's purposes.

**Background:** The Department of Health and Mental Hygiene advises that the term "incidental" is not defined in law as it relates to the smoking prohibition exemption for retail tobacco businesses, under which some "cigar bars" are currently operating. However, the department generally considers 20% to be the maximum amount of sales revenue that can be derived from products other than tobacco products for businesses to qualify for the exemption.

The bill allows a cigar bar in a professional sports venue to have up to 90% of its annual gross revenues from sources other than the sale of cigars.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene; Comptroller's Office; Department of Labor, Licensing, and Regulation; Department of Legislative Services

**Fiscal Note History:** First Reader - March 23, 2009

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