

SENATE BILL 989

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By: **Senators Forehand, Madaleno, and Raskin**

Introduced and read first time: February 22, 2010

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Health – Clean Indoor Air Act – Electronic Smoking Devices**

3 FOR the purpose of prohibiting a person from smoking an electronic smoking device in
4 certain places; altering the intent of the General Assembly relating to the Clean
5 Indoor Air Act; altering the purpose of the Clean Indoor Air Act; requiring the
6 Department of Health and Mental Hygiene to adopt regulations that prohibit
7 smoke from an electronic smoking device in certain indoor areas; requiring a
8 certain report to include certain information on certain enforcement efforts
9 relating to smoke from electronic smoking devices; specifying that certain
10 provisions of law do not preempt a county or municipal government from
11 adopting certain measures regarding involuntary exposure to smoke from an
12 electronic smoking device; altering the definition of a certain term; defining a
13 certain term; and generally relating to the Clean Indoor Air Act.

14 BY repealing and reenacting, with amendments,
15 Article – Health – General
16 Section 24–501 through 24–503, 24–505, 24–507, and 24–510
17 Annotated Code of Maryland
18 (2009 Replacement Volume)

19 BY repealing and reenacting, without amendments,
20 Article – Health – General
21 Section 24–504, 24–506, 24–508, and 24–509
22 Annotated Code of Maryland
23 (2009 Replacement Volume)

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

26 **Article – Health – General**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 24-501.

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

3 (b) **“ELECTRONIC SMOKING DEVICE” MEANS AN ELECTRONIC DEVICE**
4 **THAT IS USED TO DELIVER NICOTINE OR OTHER SUBSTANCES TO THE**
5 **INDIVIDUAL WHO INHALES FROM THE DEVICE.**

6 (c) “Employee” has the meaning stated in § 5-101 of the Labor and
7 Employment Article.

8 [(c)] (d) “Employer” has the meaning stated in § 5-101 of the Labor and
9 Employment Article.

10 [(d)] (e) “Environmental tobacco smoke” means the complex mixture
11 formed from the escaping smoke of a burning tobacco product or smoke exhaled by the
12 smoker.

13 [(e)] (f) “Indoor area open to the public” means:

14 (1) An indoor area or a portion of an indoor area accessible to the
15 public by either invitation or permission; or

16 (2) An indoor area of any establishment licensed or permitted under
17 Article 2B of the Code for the sale or possession of alcoholic beverages.

18 [(f)] (g) “Place of employment” has the meaning stated in § 5-101 of the
19 Labor and Employment Article.

20 [(g)] (h) “Smoking” means the burning of a lighted cigarette, cigar, pipe, or
21 any other matter or substance that contains tobacco **OR THE USE OF AN**
22 **ELECTRONIC SMOKING DEVICE.**

23 24-502.

24 It is the intent of the General Assembly that the State protect the public and
25 employees from involuntary exposure to environmental tobacco smoke **AND SMOKE**
26 **FROM AN ELECTRONIC SMOKING DEVICE** in indoor areas open to the public, indoor
27 places of employment, and certain designated private areas.

28 24-503.

29 The purpose of this subtitle is to preserve and improve the health, comfort, and
30 environment of the people of the State by limiting exposure to environmental tobacco
31 smoke **AND SMOKE FROM AN ELECTRONIC SMOKING DEVICE.**

1 24–504.

2 Except as provided in § 24–505 of this subtitle, beginning on February 1, 2008, a
3 person may not smoke in:

4 (1) An indoor area open to the public;

5 (2) An indoor place in which meetings are open to the public in
6 accordance with Title 10, Subtitle 5 of the State Government Article;

7 (3) A government–owned or government–operated means of mass
8 transportation including buses, vans, trains, taxicabs, and limousines; or

9 (4) An indoor place of employment.

10 24–505.

11 This subtitle does not apply to:

12 (1) Private homes, residences, including residences used as a business
13 or place of employment, unless being used by a person who is licensed or registered
14 under Subtitle 5 of the Family Law Article to provide day care or child care, and
15 private vehicles, unless being used for the public transportation of children, or as part
16 of health care or day care transportation;

17 (2) A hotel or motel room rented to one or more guests as long as the
18 total percent of hotel or motel rooms being so used does not exceed 25%;

19 (3) A retail tobacco business that is a sole proprietorship, limited
20 liability company, corporation, partnership, or other enterprise, in which:

21 (i) The primary activity is the retail sale of tobacco products
22 and accessories; and

23 (ii) The sale of other products is incidental;

24 (4) Any facility of a manufacturer, importer, wholesaler, or distributor
25 of tobacco products or of any tobacco leaf dealer or processor in which employees of the
26 manufacturer, importer, wholesaler, distributor, or processor work or congregate; or

27 (5) A research or educational laboratory for the purpose of conducting
28 scientific research into the health effects of tobacco smoke **OR SMOKE FROM AN**
29 **ELECTRONIC SMOKING DEVICE.**

30 24–506.

1 (a) Signs that state “Smoking Permitted in This Room” shall be prominently
2 posted and properly maintained where smoking is allowed under § 24–505(2) of this
3 subtitle.

4 (b) The signs shall be posted and maintained by the owner, operator,
5 manager, or other person having control of the area.

6 (c) The letters on the signs shall be at least 1 inch in height.
7 24–507.

8 (a) The Department shall adopt regulations that prohibit environmental
9 tobacco smoke **OR SMOKE FROM AN ELECTRONIC SMOKING DEVICE** in indoor areas
10 open to the public.

11 (b) On or before September 30 of each year, the Department shall report, in
12 accordance with § 2–1246 of the State Government Article, to the General Assembly
13 on:

14 (1) The enforcement efforts of the Department to eliminate
15 environmental tobacco smoke **OR SMOKE FROM AN ELECTRONIC SMOKING DEVICE**
16 in indoor areas open to the public during the prior year; and

17 (2) The results of these enforcement efforts.

18 24–508.

19 (a) Subject to subsection (c) of this section and except as provided in
20 subsection (d) of this section, a person who violates a provision of this subtitle or a
21 regulation adopted under § 24–507(a) of this subtitle:

22 (1) For a first violation, shall be issued a written reprimand by the
23 Secretary or the Secretary’s designee;

24 (2) For a second violation, is subject to a civil penalty of \$100; and

25 (3) For each subsequent violation, is subject to a civil penalty not less
26 than \$250.

27 (b) The Secretary may waive a penalty established under subsection (a) of
28 this section, giving consideration to factors that include:

29 (1) The seriousness of the violation; and

30 (2) Any demonstrated good faith measures to comply with the
31 provisions of this subtitle.

1 (c) (1) This subsection does not apply to an alleged violation of subsection
2 (d) of this section.

3 (2) It is an affirmative defense to a complaint brought against a
4 person for a violation of a provision of this subtitle or a regulation adopted under this
5 subtitle that the person or an employee of the person:

6 (i) Posted a “No Smoking” sign as required under § 24–506 of
7 this subtitle;

8 (ii) Removed all ashtrays and other smoking paraphernalia
9 from all areas where smoking is prohibited; and

10 (iii) If the violation occurred in a bar, tavern, or restaurant:

11 1. Refused to seat or serve any individual who was
12 smoking in a prohibited area; and

13 2. If the individual continued to smoke after an initial
14 warning, asked the individual to leave the establishment.

15 (d) An employer who discharges or discriminates against an employee
16 because that employee has made a complaint, has given information to the
17 Department in accordance with this subtitle, has caused to be instituted or is about to
18 cause to be instituted a proceeding under this subtitle, or has testified or is about to
19 testify in a proceeding under this subtitle, shall be deemed in violation of this subtitle
20 and shall be subject to a civil penalty of at least \$2,000 but not more than \$10,000 for
21 each violation.

22 (e) (1) An employee may not:

23 (i) Make a groundless or malicious complaint under this
24 subtitle to the Secretary or an authorized representative of the Secretary;

25 (ii) In bad faith, bring an action under this subtitle; or

26 (iii) In bad faith, testify in an action under this subtitle or a
27 proceeding that relates to the subject of this subtitle.

28 (2) The Secretary may bring an action for injunctive relief and
29 damages against a person who violates the provisions of paragraph (1) of this
30 subsection.

31 (f) A penalty collected by the Secretary under this section shall be paid to
32 the Cigarette Restitution Fund established under § 7–317 of the State Finance and
33 Procurement Article.

34 24–509.

1 (a) Within 90 days from the receipt of an application for a waiver and the
2 date that all conditions for the application for a waiver required in the regulations
3 adopted by the Secretary have been satisfied, the health officer of a county may grant
4 a waiver from the application of a specific provision of this subtitle, if prior to the
5 granting of the waiver, the applicant for a waiver establishes in writing:

6 (1) Compliance with a specific provision of this subtitle would cause
7 undue financial hardship; or

8 (2) The existence of other factors that would render compliance
9 unreasonable.

10 (b) The Secretary may impose conditions or restrictions on a waiver granted
11 under subsection (a) of this section to:

12 (1) Minimize the adverse effects of the waiver on individuals
13 involuntarily exposed to secondhand smoke; and

14 (2) Ensure that the waiver is consistent with the purposes of this
15 subtitle.

16 (c) The Secretary shall adopt regulations necessary to implement this
17 section.

18 (d) (1) A waiver may not be granted under subsection (a) of this section on
19 or after January 31, 2011.

20 (2) A waiver granted under subsection (a) of this section terminates on
21 January 31, 2011.

22 24–510.

23 Nothing in this subtitle shall be construed to preempt a county or municipal
24 government from enacting and enforcing more stringent measures to reduce
25 involuntary exposure to environmental tobacco smoke **OR SMOKE FROM AN**
26 **ELECTRONIC SMOKING DEVICE.**

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2010.