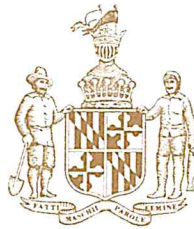


BRIAN E. FROSH  
ATTORNEY GENERAL

ELIZABETH F. HARRIS  
CHIEF DEPUTY ATTORNEY GENERAL

CAROLYN A. QUATTROCKI  
DEPUTY ATTORNEY GENERAL



SANDRA BENSON BRANTLEY  
COUNSEL TO THE GENERAL ASSEMBLY

KATHRYN M. ROWE  
DEPUTY COUNSEL

JEREMY M. MCCOY  
ASSISTANT ATTORNEY GENERAL

DAVID W. STAMPER  
ASSISTANT ATTORNEY GENERAL

THE ATTORNEY GENERAL OF MARYLAND  
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

March 10, 2020

The Honorable Dereck E. Davis  
Maryland General Assembly  
Chair, Economic Matters Committee  
231 House Office Bldg.  
Annapolis, MD 21401

**Re: House Bill 3 – Business Regulation – Flavored Tobacco Products – Prohibition**

Dear Chair Davis:

You asked for advice about House Bill 3. You asked whether an amendment for a “smoking bar” creates a new exception to the Clean Indoor Air Act. I do not believe that it does.

The language in question is proposed new Business Regulation Article (“BR”), § 16.5-205(f)(2)(iii), which provides an exception to the prohibition to “manufacture, ship, import, or sell into or within the State [of] an other tobacco product that has a characterizing flavor for off-premises consumption.” The exception provides:

THIS SUBSECTION MAY NOT BE INTERPRETED TO PROHIBIT THE HOLDER OF A LICENSE ISSUED UNDER THIS TITLE FROM MANUFACTURING, SHIPPING, IMPORTING, OR SELLING INTO OR WITHIN THE STATE: AN OTHER TOBACCO PRODUCT WITH A CHARACTERIZING FLAVOR FOR ON-PREMISES CONSUMPTION AT A SMOKING BAR.

Smoking bar is defined as:

A RETAIL TOBACCO ESTABLISHMENT THAT:

- (1) IS PRIMARILY ENGAGED IN THE RETAIL SALE OF PREMIUM CIGARS, PIPE TOBACCO, AND OTHER TOBACCO PRODUCTS FOR ON-PREMISES CONSUMPTION;
- (2) IN WHICH THE SALE OF OTHER PRODUCTS IS INCIDENTAL; AND
- (3) PRIMARILY OCCUPIES AN ENCLOSED INDOOR SPACE.

Proposed new BR § 16.5-101(t).

The Honorable Dereck E. Davis

March 10, 2020

Page 2

The Clean Indoor Air Act prohibits smoking in

- (1) An indoor area open to the public;
- (2) An indoor place in which meetings are open to the public in accordance with [the Open Meetings Act];
- (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.

Health-General Article ("HG"), § 24-504. Exceptions to the foregoing where indoor smoking is allowed include an exception for:

A retail tobacco 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.

HG § 24-505(3). See also COMAR 10.19.04.03.

In my view, the exception for "smoking bar" is consistent with the exception for a retail tobacco business, thus House Bill 3 does not create a new exemption from the Clean Indoor Air Act.

Sincerely,



Sandra Benson Brantley  
Counsel to the General Assembly