

**Testimony in Support of HB1295 with Amendments**  
Multifamily Dwellings - Smoking Policies

House Bill 1295 would require landlords and governing bodies of multifamily housing units to adopt a smoking policy that lists where smoking is permitted and prohibited, processes for filing complaints for violation of that policy, and penalties for violation. Landlords and governing bodies have broad discretion in determining their policies. This bill does not require that they prohibit smoking. My testimony will focus on this bill's consistency with prior enactments, the dangers of secondhand smoke, potential legal remedies for residents experiencing secondhand smoke at common law and the need to preserve those remedies, anti-preemption and a technical amendment, and the potential benefits of adopting a smoking policy disclosure law like HB1295.

This bill is also consistent with other state policies emphasizing the importance of smoke-free air. The state Clean Indoor Air Act prohibits smoking in indoor areas open to the public (such as hallways or common rooms of multiunit housing) and preserves the ability of local laws to further limit the areas where smoking is prohibited. Similarly, landlords and governing bodies of multiunit housing developments can choose whether to allow smoking in or around private residences within the boundaries of state and local law.

**Secondhand smoke is dangerous to health and cannot be contained with existing technologies.**

Individuals living in multifamily housing often live in close proximity with each other, sharing walls, hallways, and ventilation systems with their neighbors. When one individual living in multifamily housing chooses to smoke, secondhand smoke can drift into nearby units. When non-smokers breathe in secondhand smoke, they take in the same nicotine and toxic chemicals in the same way that active smokers do. This can cause severe respiratory issues, especially for children with asthma, and at high exposure levels can cause heart disease, stroke, and lung cancer. Secondhand smoke drift in someone's residence can also seep into walls and furniture leaving a strong stench that is difficult and expensive, if not impossible, to remove. According to the American Society for Heating, Refrigeration, and Air-Conditioning Engineers, the experts on ventilation and indoor air quality, there is no way to control the adverse effects of secondhand smoke with ventilation or any advanced air cleaning technologies.

**Marylanders in multiunit housing can pursue legal remedies to protect themselves from secondhand smoke.**

Residents of multiunit housing who are experiencing secondhand smoke drift from their neighbors may take legal action by filing a lawsuit to stop the smoking and protect themselves. They have the option of filing private complaints claiming nuisance, battery, trespass, harassment, or breach of the warranty of habitability. Although there are options for legal remedies, a resident has not yet been granted relief on these theories in the state of Maryland. Often, simply suggesting to a neighbor or landlord that a resident is considering one of these legal actions is sufficient to remedy the situation. However, this bill lacks express language indicating that these legal options still exist, regardless of the

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policy the landlord or governing body chooses to adopt. If a policy adopted under this new law affirmatively allows smoking, the concern is that residents being affected by secondhand smoke may be discouraged from taking action to protect themselves. If residents do take legal action, the neighbors, landlords, or governing bodies might try to use the policy as a defense. I ask that you consider an amendment that includes a provision protecting the ability of residents to bring forth these private legal claims to protect themselves and their families from the negative health consequences of secondhand smoke.

Please note that I would also suggest an amendment bringing HB1295 into compliance with state law regarding vaporizing cannabis. Section 13-3314 of the Health General Article prohibits private landlords from restricting the ability of medical cannabis patients to use vaporizing cannabis for their medical treatment. HB1295 should be amended to incorporate this existing provision of state law.

**The ability of local governments to adopt more stringent smoking policy requirements must be preserved.**

Local governments are uniquely situated to address the distinct health needs of their communities. Adding express anti-preemption language to HB1295 would preserve the ability of local governments to confront problems and act to further protect public health by adopting smoking policy requirements beyond those in HB1295. Such an amendment, and the language I suggested submitted with my written testimony and shared with the sponsor, is consistent with the state's Clean Indoor Air Act.

**Smoking policy disclosure laws have the potential to benefit residents of multiunit housing.**

Smoking policy disclosure laws have been adopted in other states, and may lead to increased education for property owners, higher likelihood of adoption of smoke-free policies, and increase transparency for individuals considering their housing options. Two states and a handful of municipalities have adopted smoking policy disclosure laws similar to HB1295. Oakland, California, and New York City, New York, have local disclosure laws that apply to both multiunit rental and owner-occupied properties, while Maine and Oregon have statewide disclosure laws that only apply to multiunit rental properties. While easy to implement and legally sound, relatively little evaluation on the impact on such laws has been done. Anecdotally, tobacco control organizations in some cities and counties that have adopted smoking policy disclosure laws have reported increased calls from landlords asking about adopting smoke-free policies.<sup>1</sup> This suggests improved property owner education and could lead to increased adoption of smoke-free policies, but no empirical evidence exists to support this. Policy disclosures may also cause interested renters or buyers of multiunit housing to reconsider their interest in a property based on whether it prohibits smoking. Unfortunately, this benefit can only be realized by individuals and families with the means to seek and secure other housing.

**Conclusion**

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<sup>1</sup> *Disclosure of Smoking Policies in Multi-Unit Housing*, Public Health Law Center at Mitchell Hamline School of Law (May 2021), <https://www.publichealthlawcenter.org/sites/default/files/resources/Disclosure-of-Smoking-Policies-MUH.pdf>.

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Secondhand smoke is incredibly dangerous to those who are exposed to it, especially children and individuals with preexisting conditions. Smoking policy disclosure laws like HB1295 can protect nonsmokers in multiunit housing from the harms of secondhand smoke through awareness and education, and should include provisions protecting the existing legal rights of nonsmokers to take private legal action, expressly allowing local governments elect to adopt more stringent protective measures, and ensuring compliance with existing state public health laws. I therefore support House Bill 1295 with amendments.