

The Clean Indoor Air Act

§ 24-501. Definitions.

- (a) In general.- In this subtitle the following words have the meanings indicated.
- (b) Employee.- "Employee" has the meaning stated in § 5-101 of the Labor and Employment Article.
- (c) Employer.- "Employer" has the meaning stated in § 5-101 of the Labor and Employment Article.
- (d) Environmental tobacco smoke.- "Environmental tobacco smoke" means the complex mixture formed from the escaping smoke of a burning tobacco product or smoke exhaled by the smoker.
- (e) Indoor area open to the public.- "Indoor area open to the public" means:
 - (1) An indoor area or a portion of an indoor area accessible to the public by either invitation or permission; or
 - (2) An indoor area of any establishment licensed or permitted under Article 2B of the Code for the sale or possession of alcoholic beverages.
- (f) Place of employment.- "Place of employment" has the meaning stated in § 5-101 of the Labor and Employment Article.
- (g) Smoking.- "Smoking" means the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco.

§ 24-502. Legislative intent.

It is the intent of the General Assembly that the State protect the public and employees from involuntary exposure to environmental tobacco smoke in indoor areas open to the public, indoor places of employment, and certain designated private areas.

§ 24-503. Purpose.

The purpose of this subtitle is to preserve and improve the health, comfort, and environment of the people of the State by limiting exposure to environmental tobacco smoke.

§ 24-504. General consideration.

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

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

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

(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.

§ 24-505. Scope.

This subtitle does not apply to:

(1) Private homes, residences, including residences used as a business or place of employment, unless being used by a person who is licensed or registered under Subtitle 5 of the Family Law Article 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;

(2) 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%;

(3) 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;

(4) 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

(5) A research or educational laboratory for the purpose of conducting scientific research into the health effects of tobacco smoke.

§ 24-506. Posting signs.

(a) In general.- Signs that state "Smoking Permitted in This Room" shall be prominently posted and properly maintained where smoking is allowed under § 24-505(2) of this subtitle.

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

(c) Requirements.- The letters on the signs shall be at least 1 inch in height.

§ 24-507. Regulations; annual reports.

(a) Regulations.- The Department shall adopt regulations that prohibit environmental tobacco smoke in indoor areas open to the public.

(b) Annual reports.- On or before September 30 of each year, the Department shall report, in accordance with § 2-1246 of the State Government Article, to the General Assembly on:

(1) The enforcement efforts of the Department to eliminate environmental tobacco smoke in indoor areas open to the public during the prior year; and

(2) The results of these enforcement efforts.

§ 24-508. Violations; penalties.

(a) In general.- Subject to subsection (c) of this section and except as provided in subsection (d) of this section, a person who violates a provision of this subtitle or a regulation adopted under § 24-507(a) of this subtitle:

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

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

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

(b) Waiver of penalties.- The Secretary may waive a penalty established under subsection (a) of this section, giving consideration to factors that include:

(1) The seriousness of the violation; and

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

(c) Scope.-

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

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

(i) Posted a "No Smoking" sign as required under § 24-506 of this subtitle;

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

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

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

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

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

(e) Malicious complaints or bad faith actions prohibited; injunctions and damages.-

(1) An employee may not:

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

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

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

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

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

§ 24-509. Waiver requirements.

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

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

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

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

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

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

(c) Regulations.- The Secretary shall adopt regulations necessary to implement this section.

(d) Limitation on waivers.-

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

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

§ 24-510. Counties and municipalities not preempted from enacting more stringent measures.

Nothing in this subtitle shall be construed to preempt a county or municipal government from enacting and enforcing more stringent measures to reduce involuntary exposure to environmental tobacco smoke.

§ 24-511. Short title.

This subtitle may be cited as the Clean Indoor Air Act.