

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 238

(Chair, Economic Matters Committee)(By Request -
 Departmental - Health)

Economic Matters

Finance

Public Health - Clean Indoor Air Act - Revisions

This departmental bill extends the ban on smoking in public indoor areas, places of employment, and on specified mass transit systems under the Clean Indoor Air Act (CIAA) to include “vaping.” Signage that states “No Smoking or Vaping” must be conspicuously posted and properly maintained in each indoor area open to the public (including each public entrance to an indoor area) where smoking or vaping is prohibited under CIAA. The bill adds new defined terms and alters the definitions of existing terms under CIAA, conforms existing affirmative defense language, and repeals obsolete language regarding waivers. Uncodified language (1) requires the Maryland Department of Health (MDH) to convene a workgroup to study the issuance of alcoholic beverages licenses to tobacconists; (2) prohibits issuing such licenses to tobacconists from July 1, 2024, through July 1, 2026; and (3) requires the workgroup, by July 1, 2025, to report its findings and recommendations to the General Assembly. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures increase by up to \$215,600 in FY 2025 only for signage. MDH general fund expenditures increase by \$48,800 in FY 2025 only for contractual staff. Compliance with and enforcement of the bill can be handled by State agencies with existing budgeted resources. Potential minimal increase in special fund revenues to the Cigarette Restitution Fund (CRF) as a result of fines.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	48,800	0	0	0	0
SF Expenditure	215,600	0	0	0	0
Net Effect	(\$264,400)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local health departments can handle enforcement with existing resources; any signage that local governments must install to comply with the bill’s requirements can likely be paid for with existing budgeted funds. Revenues are not materially affected.

Small Business Effect: MDH has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: “Vaping” means the use of an electronic smoking device (ESD) or any device through which the user inhales aerosol containing tobacco, cannabis, or hemp.

The bill expands the current definition of “environmental smoke” to include the complex mixture formed from the escaping aerosol of an ESD or exhaled as ESD aerosol.

The current affirmative defense to a complaint brought against a person for a violation of CIAA is expanded to include that a person or an employee of the person (1) posted a “No Smoking *or Vaping*” sign; (2) removed all *vaping* paraphernalia; and (3) if a violation occurred in a bar or restaurant, refused to seat or serve anyone who was *vaping* in a prohibited area and, if the individual continued to *vape* after an initial warning, asked the individual to leave.

The bill also conforms workplace smoking ban language under CIAA to specify that regulations must prohibit *environmental smoke* rather than environmental *tobacco* smoke in indoor places of employment not normally open to the public.

Current Law:

Definitions

“Electronic smoking device” means a device that can be used to deliver aerosolized or vaporized nicotine to an individual inhaling from the device. ESD includes an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, and vaping liquid, and, except as otherwise specified, any component, part, or accessory of such a device regardless of whether or not it is sold separately.

“Environmental smoke” means the complex mixture formed from the escaping smoke of a burning tobacco, cannabis, or hemp product or smoke exhaled by the smoker. “Smoking” means the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco.

“Hemp” means the plant *Cannabis sativa* L. and any part of that plant, including all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis. “Hemp” does not include any plant or part of a plant intended for a use that is regulated under Title 13, Subtitle 33 of the Health-General Article.

Smoking Ban

Under CIAA, a person generally may not smoke in (1) an indoor area open to the public; (2) an indoor place in which meetings are open to the public; (3) a government-owned or -operated means of mass transportation; (4) an indoor place of employment; (5) a private home used by a licensed child care provider; or (6) a private vehicle used for public transportation of children or as part of health care or day care transportation. The prohibition includes bars, clubs, restaurants, pubs, taverns, retail establishments, theaters, concert halls, athletic facilities, financial service institutions, government buildings, educational institutions, museums, and libraries. However, the prohibition does not apply to (1) private homes or residences; (2) private vehicles; (3) a hotel or motel room as long as the total percent of rooms so used does not exceed 25%; (4) specified tobacco facilities and retail businesses (including tobacconists); or (5) a laboratory for the purpose of conducting scientific research into the health effects of tobacco smoke.

Penalty Provisions

A person who violates a provision of CIAA (or a regulation adopted under CIAA) is subject to specified penalties. For a first violation, the Secretary of Health or a designee must issue a written reprimand. For a second violation, a violator is subject to a \$100 civil penalty and for each subsequent violation, a civil penalty of at least \$250. A penalty may be waived by the Secretary of Health, under specified circumstances. Any civil penalties collected must be paid into CRF.

It is an affirmative defense to a complaint brought against a person for a violation of CIAA or a regulation adopted thereunder that the person (or an employee of the person) posted a “No Smoking” sign as required; removed all ashtrays and smoking paraphernalia from all areas where smoking is prohibited; and, if the violation occurred in a bar, tavern, or restaurant, refused to seat or serve any individual smoking in a prohibited area and asked the individual to leave the establishment if they continued to smoke after an initial warning.

Obsolete Waiver Provisions

Within 90 days from the receipt of an application for a waiver (and the date that all conditions for the waiver application were satisfied), the health officer of a county could grant a waiver from the application of a specific CIAA provision, if the applicant for a

waiver established in writing that compliance (1) with a specific CIAA provision would cause undue financial hardship or (2) would be unreasonable given the existence of other factors. A waiver could not be granted after January 31, 2011, and a waiver granted prior to January 31, 2011, terminated on that date.

Background: MDH advises that a universal ban on indoor smoking has proven a successful public health strategy to reduce exposure to secondhand smoke. Part of the success of CIAA is the ability of MDH, with its partners at the Maryland Department of Labor and local health departments, to establish uniform and consistent standards for businesses and other public indoor spaces across the State. Since enactment of CIAA, several external factors have changed the tobacco landscape that create previously unforeseen enforcement challenges. The bill is intended to reduce secondhand exposure to potentially harmful chemicals from vaping while simplifying the enforcement of CIAA for covered entities.

As of March 31, 2023, 17 states and the District of Columbia have passed comprehensive smokefree indoor air laws that include e-cigarettes. These laws prohibit smoking and the use of e-cigarettes in indoor areas of private worksites, restaurants, and bars.

State Expenditures:

Maryland Department of Transportation

The Maryland Department of Transportation (MDOT) advises that the bill requires it to post “No Smoking or Vaping” signs (1) inside all buses, trains, and mobility/paratransit vehicles operated by the Maryland Transit Administration (MTA) and (2) at each entrance of Motor Vehicle Administration (MVA) branches and other MDOT buildings. MDOT estimates that signs will cost \$100 each, reflecting an assumption that they will be high-quality, permanent metallic signs.

According to MDOT, MTA has 811 buses and 515 mobility/paratransit vehicles in service, each of which would need one sign installed. For active locomotives, MDOT advises that MTA must post signs at each of the two entrances on railcars; it estimates that a total of 104 signs would need to be installed for the light rail, 354 signs for MARC trains, and 172 signs for Washington Metropolitan Area Transit Authority trains. Overall, MDOT estimates that it would need to install 1,956 signs, at a cost of \$195,600, for all active MTA vehicles and locomotive cars. At this time, MDOT cannot provide a precise estimate of how many signs must be installed at MVA branches and other MDOT buildings; however, MDOT estimates that those costs would not exceed \$20,000.

Thus, TTF expenditures increase by as much as \$215,600 in fiscal 2025 only for MDOT to install required signage on active MTA vehicles and locomotives and in MDOT

buildings. In future fiscal years, signage costs are likely minimal and absorbable, as MDOT must replace signs only as needed.

Maryland Department of Health

The bill requires MDH to convene a workgroup to study the issuance of alcoholic beverages licenses to tobacconists. Although the bill does not specify that MDH must staff the workgroup, this analysis assumes that staff from MDH are needed to support the workgroup and assist with preparing the workgroup’s report.

Accordingly, MDH general fund expenditures increase by \$48,849 in fiscal 2025 only, which reflects the cost of hiring one part-time contractual health policy analyst to staff the workgroup beginning July 1, 2024. This level of staffing assumes assistance is provided by the Alcohol, Tobacco, and Cannabis Commission, which is the only other agency represented on the workgroup. The estimate includes a salary, fringe benefits, one-time start-up costs, and operating expenses.

Contractual Position	0.5
Salary and Fringe Benefits	\$41,863
Operating Expenses	<u>6,986</u>
Total FY 2025 MDH Expenditures	\$48,849

This analysis assumes that the contractual position terminates at the end of fiscal 2025, concurrent with the date by which the workgroup must submit its report.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 244 (Chair, Finance Committee)(By Request - Departmental - Health) - Finance.

Information Source(s): Maryland Association of County Health Officers; Alcohol, Tobacco, and Cannabis Commission; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Maryland Department of Labor; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 8, 2024
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Analysis by: Ralph W. Kettell

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES
Maryland Department of Health
Session 2024

BILL TITLE: Public Health - Clean Indoor Air Act - Revisions
BILL NUMBER: HB0238
PREPARED BY:
(Program\Unit): Prevention and Health Promotion Administration

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

Businesses subject to the CIAA will be required to prohibit vaping in indoor areas open to the public. This will include updating employee training, updating signage, and taking action in the case of potential violations of the CIAA. Enforcement will be greatly simplified for businesses, as any aerosol from an ESD or smoke exhaled in indoor public areas will be prohibited. Costs to update signage and employee training is expected to be minimal.

Small businesses may be minimally financially impacted by this proposal, but the impact is not expected to be different from the impact on other businesses.