



STATE OF MARYLAND

DHMH

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Maryland Department of Health and Mental Hygiene

201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

DEC 02 2010

The Honorable Thomas V. Mike Miller, Jr.  
President of the Senate  
State House, H-107  
Annapolis, MD 21401-1991

The Honorable Michael E. Busch  
Speaker of the House of Delegates  
State House, H-101  
Annapolis, MD 21401-1991

Re: Clean Indoor Air Act - 2010 Annual Report - Health-General §24-507(b)

Dear President Miller and Speaker Busch:

Pursuant to Health-General, §24-507(b), Annotated Code of Maryland, The Department is submitting this report summarizing the enforcement efforts related to the Clean Indoor Air Act. The report provides details on the enforcement activities conducted by the Department and its partners, the County Health Departments to eliminate environmental tobacco smoke in indoor areas open to the public during 2010.

The overall impact of Clean Indoor Air Act has been positive in Maryland. The regulated community and the advocates are working together to keep indoor places open to the public smoke-free. The Department feels strongly that such important public health laws help to make our state a healthier place to live in.

Thank you for your continued interest in the public health of the state. If you should have any questions or comments, please do not hesitate to contact Ms. Wynee Hawk, Director of Governmental Affairs at 410-767-6481.

Sincerely,

John M. Colmers  
Secretary

Enclosure

cc: Ms. Frances Phillips  
Ms. Heather Hauck  
Ms. Wynee Hawk  
Ms. Sarah Albert, MSAR # 6090

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**MARYLAND DEPARTMENT OF  
HEALTH AND MENTAL HYGIENE  
INFECTIOUS DISEASE AND ENVIRONMENTAL HEALTH  
ADMINISTRATION (IDEHA)**

**THE MARYLAND CLEAN INDOOR AIR ACT OF 2007  
MARYLAND CODE ANNOTATED,  
HEALTH-GENERAL TITLE 24, SUBTITLE 5**

**2010 Annual Report**

Martin O'Malley  
Governor

Anthony G. Brown  
Lieutenant Governor

John M. Colmers  
Secretary  
Department of Health & Mental Hygiene

**September 2010**

## INTRODUCTION

The Clean Indoor Air Act (CIAA) was signed into law on May 17, 2007. Its purpose was “to preserve and improve the health, comfort, and environment of the people of the State by limiting exposure to environmental tobacco smoke.” The Act prohibits smoking in indoor areas open to the public except in limited circumstances. The Act specifically prohibits smoking in public meeting places, public transportation vehicles, and indoor places of employment. Regulatory authority for the Act is vested with the Department for public areas, and the Department of Labor, Licensing, and Regulation (DLLR) for workplace areas not ordinarily open to the public.

Pursuant to Md. Code Ann., Health-General §24-507(b), this report summarizes the enforcement efforts in 2010 of the Department of Health and Mental Hygiene (the Department) and its partners, the Local Health Departments, to eliminate environmental tobacco smoke in indoor areas open to the public.

## IMPLEMENTATION

As the CIAA enters its third year, anecdotal and enforcement data indicate that the Act has been extremely successful in reducing exposure to environmental tobacco smoke in the majority of indoor areas open to the public. Restaurants, hotels, bars, and other private and public entities have, for the most part, successfully implemented the CIAA without difficulty.

### Outreach and Public Education

#### *Continued Success in Implementing the Clean Indoor Air Act*

Successful implementation of the CIAA has required close coordination and cooperation between the DHMH *Infectious Disease and Environmental Health Administration (IDEHA)*, the *Center for Health Promotion, Education, and Tobacco Use Prevention (CHP)*, local health departments, and advocates for tobacco use prevention.

Some highlights of the achievements of clean indoor air campaign efforts are:

- Dawn Berkowitz, Chief, Federal and Special Tobacco Control Initiatives, presented Maryland’s success with the promotion of the Clean Indoor Air Act on a national Tobacco Control Network webinar, *Using Mass Media Campaigns to Build Support for Compliance with Smoke Free Laws* in August 2009. The presentation highlighted Maryland’s partnerships with organizations such as the American Cancer Society, Robert Wood Johnson Foundation, and the Campaign for Tobacco Free Kids to utilize existing media efforts in order to promote the positive aspects of clean indoor air through a series of press conferences and targeted ad campaigns before and after implementation.
- Dawn Berkowitz was selected to provide a case study for the international publication, *“Lessons Learned Globally: Secondhand Smoke Mass Media Campaigns”*, which synthesized data and provided lessons learned from secondhand smoke campaigns around the world. Maryland’s “air!” campaign, which “branded” and promoted the Clean Indoor

Air Act was highlighted in this case study. The document was released in January 2010 and can be found at <http://www.stopsmokingcampaigns.org/shslessonslearned>.

- Dawn Berkowitz and Joan Stine, Director, Center for Health Promotion, presented at the Centers for Disease Control and Prevention (CDC) conference *Communities Putting Prevention to Work* in Atlanta, GA in June 2010. CDC requested that Maryland share its success implementing the Clean Indoor Air Act at this national meeting.
- IDEHA staff met regularly with local health department tobacco prevention and environmental health staff to update them on activities related to the CIAA, and has also used CIAA as a case study in presentations at the University of Maryland, Baltimore County and the Johns Hopkins Bloomberg School of Public Health.

### **Technical Assistance**

The Department has provided a number of resources to citizens, businesses, and others related to the CIAA. The Maryland Tobacco Quit line (1-800-QUITNOW) is available to individuals who wish to quit smoking. In addition, IDEHA operates a toll-free help line (1-866-703-3266) that is available to anyone with questions or concerns related to the CIAA.

#### *Maryland Tobacco Quit line: 1-800-QUITNOW (QL)*

The Department continues to look closely at data associated with its Quit line and other operations to measure the potential benefits of the Act to the citizens of Maryland. The Quit line received over 12,617 calls with approximately 6404 callers requesting cessation services. There was a 7.0% increase in Medicaid callers and 1,592 callers were referred to local health department resources. Over 4,000 shipments of nicotine patches and nicotine gum reached citizens in 2010.

#### *IDEHA Toll-Free Help Line*

The Department continued to operate its toll-free Help Line (866-703-3266) to assist business owners, employees, news media, elected officials, and the public with implementation of the CIAA. Compared with the same period last year, the number of inquiries to DHMH related to the CIAA decreased from 133 to 47 (a decrease of 65%). Inquiries and complaints continue to come in regarding the scope of the CIAA, but overall the number of complaints decreased. This decrease is partly due to the increased familiarity of businesses with the law, regulations and enforcement process. Many of the inquiries pertain to smoking-related issues not addressed by the CIAA, such as second-hand smoke in apartments with children, infiltrating from adjoining apartments.

#### *Coordination with Local Health Departments*

The Department has continued to work closely with its partners on implementation issues. The principal issues requiring coordination have been related to hookah bars, cigar bars, and ensuring consistency in enforcement. The local health departments have in most cases been able to

enforce the CIAA consistently. The one exception involves hookah and cigar bars and the application of the tobacco retailer's exemption, which are discussed below.

*Coordination with the Department of Labor, Licensing, and Regulation*

The Department continues to work very closely with DLLR and its Maryland Occupational Safety and Health (MOSH) program, which has responsibility for the implementation of the Act in workplaces not open to the public.

## **OUTCOMES**

### **Enforcement**

*Investigations*

A comprehensive survey was undertaken to determine the level of effort in local health departments devoted to the CIAA. Table 1 demonstrates that there continues to be a need for active enforcement regarding the CIAA across the state. While some counties did not record any complaints, many jurisdictions have a significant number of complaints that end up requiring investigations.

*Violations*

Between September 1, 2009 and August 31, 2010, the Department has been informed of less than a dozen letters of reprimand issued by local health departments. As Table 1 shows, most of the approximately 90 complaints did not result in any findings of violations requiring financial penalties. This is similar to the previous year. One citation resulted in a fine of \$100 being paid. One letter of reprimand was appealed to the Office of Administrative Hearings, but a settlement at the hearing resulted in the owner's agreeing to comply with the requirements of the CIAA.

*Waivers*

The Act allows a business to apply for a waiver from certain provisions of the new law if the business can demonstrate that compliance with the provision of the Act would cause undue financial hardship, or that other factors render compliance with the Act unreasonable (Md. Code Ann., Health-General §24-509). One request for a waiver was received by local health departments this past year, but it was denied due to failure to meet the requirements of the economic hardship definition. A total of 14 waivers have been granted since the Act went into effect (Table 1).

This is the final year that waivers will be effective; as of January 31, 2011 no additional waivers can be applied for, and the existing waivers will cease to be effective. DHMH has reached out to local health departments where waivers are in effect to determine how the local health departments are ensuring that the facilities in question will be able to comply fully with the CIAA as of February 1, 2011.

*Activities of Maryland Occupational Safety and Health (MOSH)*

In 2010, MOSH continued to be active in investigating worker-related complaints of smoking in the work place. MOSH issued 36 letters of reprimand during the current year, compared with 44 letters of reprimand last year.

Table 1. Enforcement Activity and Waiver Status for the Clean Indoor Air Act by Jurisdiction, 2010

County	Number of Complaints	Number of Investigations	Number of Complaints Successfully Resolved	Number of Waivers in Effect
Allegany	4	4	4	4
Anne Arundel	3	3	3	0
Baltimore City	24	24	24	2
Baltimore	15	15	13 (2 pending)	0
Calvert	3	3	3	0
Caroline	0	0	0	0
Carroll	2	2	2	1
Cecil	1	1	1	0
Charles	2	2	2	4
Dorchester	0	0	0	0
Frederick	8	8	8	1
Garrett	2	2	2	1
Harford	5	4	4 (1 pending)	0
Howard	3	3	3	0
Kent	0	0	0	0
Montgomery	1	1	1	0
Prince George's	1	1	1	0
Queen Anne's	0	0	0	0
Saint Mary's	1	1	1	0
Somerset	0	0	0	0
Talbot	2	2	2	0
Washington	1	1	1	1
Wicomico	13	13	12 (1 appeal)*	0
Worcester	0	0	0	0
<b>Total:</b>	<b>91</b>	<b>90</b>	<b>86 (4 pending)</b>	<b>14</b>

\*One violation resulted in a request for a hearing, but a pre-hearing settlement was reached by the parties.

## **FUTURE CHALLENGES AND INITIATIVES**

The implementation of the CIAA has been successful across the State as a whole, but some challenges remain largely unchanged from previous years. These include:

- Development of a policy and regulation to clarify the tobacco retailer exemption, particularly with respect to hookah bars;
- Maintenance of consistent enforcement policies across the State;
- Documentation of local health department activities related to the CIAA;
- Measurement of outcomes related to the Clean Indoor Air Act; and
- Implications of the new changes in Federal law related to tobacco for the CIAA.

During this past year, there were again many questions confronting local health departments related to the CIAA as well as businesses. There was a continued interest in understanding the definition of a tobacco retailer, particularly with respect to establishments like hookah bars that claim to derive most of their sales revenue from tobacco-related products. There were several questions about outdoor balconies, restaurant and bar patios and shelters. The Department and local health departments worked closely with several businesses to help them design and build facilities that would comply with the law and therefore avert potential violations.

Several questions have been raised by new Federal activity related to tobacco and tobacco-related products. The Department is closely monitoring developments related to such issues as electronic cigarettes and will examine whether and how these changes affects the State's ongoing implementation and enforcement of the CIAA.