



STATE OF MARYLAND

DHMH

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 23 2009

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

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

**RE: HB 359 and SB 91 (Chs. 502 and 501 of the Acts of 2007) and Health General  
Article § 24-507(b) - Clean Indoor Air Act Enforcement Efforts**

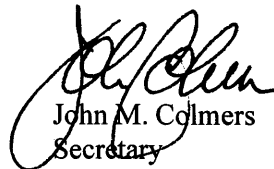
Dear President Miller and Speaker Busch:

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 2009.

The overall impact of the 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 Anne Hubbard, Director of Governmental Affairs at 410-767-6481.

Sincerely,



John M. Colmers  
Secretary

Enclosure

cc: Ms. Frances Phillips  
Dr. Peter Sybinsky  
Ms. Heather Hauch  
Ms. Anne Hubbard  
Ms. Sarah Albert, MSAR# 6090

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**MARYLAND DEPARTMENT OF  
HEALTH AND MENTAL HYGIENE  
ENVIRONMENTAL HEALTH COORDINATION PROGRAM**

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

**2009 Annual Report**

Martin O'Malley  
Governor

Anthony G. Brown  
Lieutenant Governor

John M. Colmers  
Secretary  
Department of Health & Mental Hygiene

**December 2009**

## INTRODUCTION

Pursuant to Md. Code Ann., Health-General §24-507(b), this report summarizes the enforcement efforts in 2009 of the Department of Health and Mental Hygiene (the Department) and its partners, the County Health Departments, to eliminate environmental tobacco smoke in indoor areas open to the public.

### History of the Clean Indoor Air Act of 2007

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.

## IMPLEMENTATION

As the CIAA enters its second year, the impression is that the Act has been extremely successful in reducing exposure to environmental tobacco smoke in the overwhelming 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. The primary indicator of this success is the small number of complaints and violations that have been reported across the State. Overall, the CIAA has resulted in good compliance and relatively few complaints or findings of violation.

### Outreach and Public Education

#### *Maryland’s Success Story*

Due to the successful implementation of the CIAA and the successful intradepartmental partnership between the *Environmental Health Coordination Program* for implementation and the *Center for Health Promotion, Education, and Tobacco Use Prevention* (CHP) for education and coordinated cessation initiatives, CHP staff were invited to participate in several national tobacco control endeavors, highlighting the achievements of clean indoor air campaign efforts.

- Dawn Berkowitz, Chief, Federal and Special Tobacco Control Initiatives, presented on a national Tobacco Control Network conference series in Summer 2008, entitled ***Integrating Cessation with Smoke-Free Policy Implementation***, to relay Maryland’s unique experience of putting a positive spin on clean indoor air and providing resources for smokers to help them through the quitting process as bars and restaurants became smoke free.
- Joan Stine, Director, Center for Health Promotion, presented on a national Directors of Health Promotion and Education/Partnership for Prevention webinar in Summer 2009, entitled ***Establishing Smoke-Free Policies in your Community***, to discuss the partnerships achieved in Maryland surrounding enforcement of new clean indoor air policies.

- Dawn Berkowitz worked with the *Global Dialogue for Effective Stop Smoking Campaigns* in Spring 2009 to draft a case study of Maryland's successful "air!" campaign that branded the Clean Indoor Air Act and coordinating cessation materials. The case study will be issued in a publication of international tobacco control campaign reviews.
- Dawn Berkowitz presented on another national Tobacco Technical Assistance Consortium webinar in Summer 2009, entitled *Using Mass Media Campaigns to Build Support for, and Compliance with, Smoke-Free Laws*, to highlight how Maryland was able to build partnerships with organizations such as the American Cancer Society, Robert Wood Johnson Foundation, and the Campaign for Tobacco Free Kids, as well as utilize existing media efforts, to promote the positive aspects of clean indoor air through a series of press conferences and targeted ad campaigns before and after implementation.
- Clifford Mitchell presented a seminar on the implementation of the CIAA as a part of a course on public health policy at the Johns Hopkins Bloomberg School of Public Health.

## **Technical Assistance**

### *CIAA 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. From September 1, 2008 to August 31, 2009, the Department received 133 inquiries related to the CIAA, an average of 11 inquiries per month. Of the 78 inquiries where the caller was identified, 29 (36.7%) were citizen complaints about some aspect of the CIAA (either enforcement or some other complaint); 19 (24.1%) were businesses inquiring about waivers or compliance issues; 13 (16.5%) were from health departments with questions and/or concerns; 10 (12.7%) were inquiries from citizens unconnected with complaints; 3 (3.8%) were employee complaints; and 4 (5.1%) were media calls or inquiries.

### *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 retailers exemption, which is 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

#### *Violations*

Between September 1, 2008 and August 31, 2009 the Department has been informed of fewer than a dozen findings of violation across the State in response to the Act. Most continue to be first violations with letters of reprimand. As of August 31, 2009, two \$100 fines had been received by the Cigarette Restitution Fund for second violations.

#### *Appeals*

No appeals have been heard by the Office of Administrative Hearings related to the administration 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).

The Department has continued to receive interest in the waiver application process. Cumulatively to date, DHMH has worked on 19 waiver applications with 10 local health departments: 5 (26.3%) from Allegany County, 4 (21.1%) from Baltimore City, 3 (15.8%) from Charles County, and 1 each (37.1%) from Anne Arundel, Carroll, Frederick, Garrett, Kent, St. Mary's, and Washington Counties. Three applications have been denied, 3 are still in process, and 13 were approved.

DHMH continues to work closely with local health departments in evaluating waiver applications. In cases where waivers have been granted, they are virtually all granted conditionally, that is, with restrictions that compel the business to demonstrate that it is moving towards full compliance with the provisions of the CIAA by the February 1, 2011 deadline.

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

In 2009, MOSH continued to be active in investigating worker-related complaints of smoking in the work place. As a result MOSH issued 44 letters of reprimand during the current year. However, once businesses were made aware of the new law, there were no repeat offenders, and therefore no fines were issued.

## FUTURE CHALLENGES AND INITIATIVES

The implementation of the CIAA has been successful across the State as a whole, but there are a few challenges remaining. 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.

After a year of experience, most of the questions confronting local health departments related to the CIAA involve 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. In response, the Department may seek input from affected businesses and members of the public in order to determine if additional guidance regarding these regulatory standards is advisable.

Enforcement efforts across the State have been relatively consistent, judging by the numbers of investigations, citations, and educational visits. The Department will continue to monitor these activities, to ensure that the application of the law is as uniform as possible.

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.

Finally, recent changes in Federal law have significantly expanded the ability of the U.S. Food and Drug Administration to regulate tobacco and tobacco-related products. The Department is closely monitoring the progress of the Federal effort, and will examine whether and how these changes affects the State's ongoing implementation and enforcement of the CIAA.