

Chapter 159
SMOKING AND TOBACCO PRODUCTS

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[HISTORY: Adopted by the County Council of Talbot County as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Taxicabs — See Ch. 174.

ARTICLE I
Smoking

[Adopted 2-27-1996 by Bill No. 602]

§ 159-1. Legislative findings and purpose.

- A. The County Council of Talbot County finds that:
- (1) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution; and
 - (2) Reliable studies have shown that breathing secondhand smoke is a cause of disease, including lung cancer, in healthy nonsmokers. At special risk are elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and
 - (3) Health hazards induced by breathing secondhand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm.

- B. The County Council of Talbot County declares that the purposes of this chapter are:
- (1) To protect the public health and welfare by prohibiting smoking in public places except in designated smoking areas, and by regulating smoking in places of employment; and
 - (2) To strike a reasonable balance between the needs of persons who smoke and the need of nonsmokers to breathe smoke-free air, and to recognize that, where these needs conflict, the need to breathe smoke-free air shall have priority.

§ 159-2. Definitions.

As used in this chapter, the following terms have the meanings indicated:

EMPLOYEE — Any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.

EMPLOYER — Any person, partnership, corporation, including a municipal corporation, or nonprofit entity, which employs the services of one or more persons.

ENCLOSED WORKPLACE — An indoor place of employment. An enclosed workplace includes, but is not limited to, an indoor work area, a vehicle when an employee uses it in the course of employment and it is occupied by more than one employee, an employee lounge or rest room, a conference and meeting room, a classroom, a cafeteria operated by an employer for use by its employees, a hallway, a restaurant, a bar or tavern, a sleeping room in a hotel or motel, and an assembly, conference, convention, or meeting establishment or enclosed portion of the establishment.

NONPROFIT ENTITY — Any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character building, political, social or other similar purpose, the net proceeds from the operations of which are committed to the promotion of the objectives or purposes of the organization and not to private financial gain. A public agency is not a "nonprofit entity" within the meaning of this section.

PUBLIC PLACE — Any enclosed area to which the public is invited or in which the public is permitted, including but not limited to banks, educational facilities, health facilities, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a public place.

RESTAURANT — Any coffee shop, cafeteria, sandwich stand, private or public school cafeteria, or any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities. Home-based catering occupations are exempt. **[Amended 2-3-2004 by Bill No. 934]**

1. Editor's Note: The definition of "bar or bar area," which immediately preceded this definition, was repealed 2-3-2004 by Bill No. 934.

RETAIL TOBACCO STORE — A retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

SERVICE LINE — Any indoor line at which one or more persons wait for or receive service of any kind, whether or not such service involves the exchange of money.

SMOKE (when used as a noun) — Airborne material, whether visible or not, produced by the burning of tobacco in any form.

SMOKE (when used as a verb) — Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant or other combustible substance in any manner or in any form.

§ 159-3. Applicability to County-owned facilities.

All enclosed facilities and other designated areas owned or leased by Talbot County or the Talbot County Board of Education shall be smoke-free.

§ 159-4. Prohibition of smoking in public places.

A. Smoking shall be prohibited in all enclosed public places within Talbot County including, but not limited to, the following places:

- (1) Elevators.
- (2) Buses, taxicabs, and other means of public transit under the authority of Talbot County. **[Amended 2-3-2004 by Bill No. 934]**
- (3) Rest rooms.
- (4) Service lines.
- (5) Retail stores. **[Amended 2-3-2004 by Bill No. 934]**
- (6) All areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including but not limited to offices, banks, hotels and motels.
- (7) Restaurants.
- (8) Public areas of aquariums, galleries, libraries and museums when open to the public.
- (9) Any building not open to the sky which is used primarily for exhibiting motion pictures, stage, drama, lectures, musical recitals or other similar performances, except when smoking is a part of a stage production.
- (10) Sports arenas and convention halls. **[Amended 2-3-2004 by Bill No. 934]**
- (11) Every room, chamber, place of meeting or public assembly, including school buildings and grounds under the control of any board, council, commission, committee, including joint committees, or agency of the County.

- (12) Waiting rooms, hallways, wards, and semiprivate and private rooms of health facilities, including but not limited to hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
 - (13) Polling places.
- B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility described in this section may declare the entire establishment or facility as a nonsmoking establishment.

§ 159-5. Regulation of smoking in enclosed workplaces.

- A. An employer shall ensure that there is no smoking in an enclosed workplace, except as authorized below.
- B. An employer may permit smoking in a designated smoking area which meets the following criteria:
- (1) Is constructed to provide:
 - (a) Solid walls and ceiling and a closable door;
 - (b) Walls tightly joining floor and ceiling;
 - (c) Openings to adjacent enclosed workplaces limited to makeup air inlets; and
 - (d) A ventilation system that exhausts directly to the outdoors without recirculation to nonsmoking areas;
 - (2) May not be a location where an employee, other than a custodial or maintenance employee, is required to work; and
 - (3) Shall be under negative pressure sufficient to prevent smoke migration to enclosed workplaces.
- C. An employer shall ensure that cleaning and maintenance work in a designated smoking area is conducted while no one is smoking in the area.
- D. An employer shall periodically, but at least quarterly, inspect the ventilation of any designated smoking areas to ensure that appropriate negative pressure is being maintained.
- E. Notwithstanding any other provision of this section, every employer shall have the right to designate any place of employment, or any portion thereof, as a nonsmoking area.

§ 159-6. Exceptions.

- A. Notwithstanding any other provision of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter: [Amended 2-3-2004 by Bill No. 934.]
- (1) In the bar and dining area of an eating and drinking establishment that:
 - (a) Is a club as defined in Charter 11, § 11-5D(2) Talbot County Code, Alcoholic Beverages.
 - (b) Has a Class G alcoholic beverage license issued to clubs under the Talbot County Alcoholic Beverages Law.
 - (2) Any portion of private residences, which are not open to the public for business purposes, to include home-based catering occupations.
 - (3) Up to 40% of hotel and motel rooms rented to guests.
 - (4) Retail tobacco stores.
- B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare the entire establishment as a nonsmoking establishment.

§ 159-7. Posting of signs.

- A. "Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it), shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is regulated by this chapter, by the owner, operator, manager or other person having control of such building or other place.
- B. Every theater owner, manager or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theater or auditorium.

§ 159-8. Enforcement.

- A. Enforcement of this chapter shall be the responsibility of the Talbot County Health Department. The Talbot County Health Officer, or his/her designee, shall be authorized to issue civil citations for violations of this chapter. Violations shall be prosecuted in the same manner as a code violation under § 10-119 of the Criminal Law Article, Md. Ann.

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2. Editor's Note: This bill also provided that if the exemption from the prohibitions contained in Subsection A(1), exemptions for private clubs, is held to be unconstitutional or invalid on its face or as applied to any person or circumstance, then the Council intends that:
- (1) The exemption be severed from the remainder of Bill No. 934; and
 - (2) All of the provisions of Chapter 159, Article I, as otherwise amended by Bill No. 934, continue in effect and apply to all eating and drinking establishments, including those eating and drinking establishments that were exempted under Subsection A(1).

Code, as amended. The County Attorney shall be authorized to prosecute violations. **[Amended 2-3-2004 by Bill No. 934]**

- B. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Health Department.
- C. The Health Department shall require, while an establishment is undergoing otherwise mandated inspections, a self-certification from the owner, operator or other person having control of such establishment that the establishment is in compliance with all the requirements of this chapter.
- D. Any owner, manager, operator or employee of any establishment regulated by this chapter may inform persons violating this chapter of the appropriate provisions thereof.
- E. Notwithstanding any other provision of this chapter, a private citizen may bring legal action to enforce this chapter.

§ 159-9. Violations and penalties.

- A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with any of its provisions.
- B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.
 - B.1 Any person who violates this chapter, for the first violation only, shall receive a written reprimand issued by the Talbot County Health Officer or his/her designee. The written reprimand shall not be considered a violation of this chapter for purposes of the penalties imposed by Subsection D of this section. **[Added 2-3-2004 by Bill No. 934]**
- C. Any person who violates any provision of this chapter shall be guilty of a civil infraction and, upon conviction, shall be punished by: **[Amended 2-3-2004 by Bill No. 934]**
 - (1) A fine of \$100 for a first violation of this chapter.
 - (2) A fine of \$200 for a second or subsequent violation of this chapter within any twelve-month period, except that in addition to the prescribed fine, if the operator of an eating or drinking establishment holding an Alcoholic Beverages License under Chapter 11 of the Talbot County Code, Talbot County Alcoholic Beverages Ordinance, has three or more violations within any twelve-month period, the alcoholic beverage license shall be suspended as follows:
 - (a) For the third offense, suspension for three days
 - (b) For the fourth and any subsequent offenses, suspension for 10 days, plus an additional consecutive ten-day suspension for each additional violation in excess of four within any twelve-month period.

- (3) All fines collected shall be paid to Talbot County.

§ 159-10. Nonretaliation.

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter.

§ 159-11. Interpretation. [Amended 2-3-2004 by Bill No. 934]

- A. This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.
- B. This article adds to, and does not replace or restrict, any other applicable federal, state, or County law or regulation.

ARTICLE II
Tobacco Products
[Adopted 5-22-2001 by Bill No. 813]

§ 159-12. Purpose.

The Talbot County Council finds and declares that tobacco products are a hazard to the health of the general public, especially youth, and that tobacco products should be made accessible at retail places only through the intervention of the retail seller or seller's employee.

§ 159-13. Placement of Tobacco Products; definitions; exceptions.

- A. A retail seller of tobacco products shall not display or store the product in any place that is accessible to buyers of the product without the intervention of the seller or an employee of the seller. Violation of the provisions of this article shall be a civil infraction subject to the penalties provided herein.
- B. "Tobacco product" means any substance containing tobacco, including cigarettes, cigars, smoking tobacco, snuff, or smokeless tobacco.

- C. "Retail seller" means the owner or proprietor of the business establishment.
- D. This section does not apply to:
 - (1) The sale of any tobacco product from a vending machine that complies with all requirements of state law; or
 - (2) Any store where only tobacco products are sold either exclusively or primarily.

§ 159-14. Enforcement.

- A. Any person who desires to report an alleged violation of this article may file a written complaint with the Talbot County Health Department. Upon receipt of a written complaint, representatives of the Talbot County Health Department shall inspect the premises and document their findings.
- B. If, during routine inspections of retail establishments covered by this article, any state or County agency finds that the requirements of this article are not being met, they shall report such noncompliance to the Talbot County Health Department.
- C. Written warnings and civil citations for alleged violations of this article shall be issued by representatives of the Talbot County Health Department and prosecuted by the County Attorney in accordance with the procedures and requirements pertaining to municipal infractions set forth in Article 23 A, § 3, Annotated Code of Maryland, as the same may be amended from time to time.

§ 159-15. Violations and penalties.

Any person who violates any provision of this article shall be guilty of a civil infraction and shall be punished as follows:

- A. For a first and second violation, upon a written acknowledgement of the violation by the retail seller, representatives of the Talbot County Health Department shall provide information concerning the requirements of this article and issue a written warning. A subsequent violation shall be treated as a first offense.
- B. All violations other than those disposed of pursuant to the above § 23-24A(1) shall be punished by a fine in accordance with the following schedule:
 - (1) For a first offense: \$100;
 - (2) For a second offense: \$200;
 - (3) For a third or subsequent offense: \$300.