



FROM THE DIRECTOR

This issue of *Tobacco Regulation Review* contains the annual review of the Maryland General Assembly session, a feature many of you have commented is helpful and interesting. We are pleased to offer a review of the 2006 session in which some positive outcomes, such as increased tobacco control funding, are detailed and some disappointments, such as failure of the Clean Indoor Air Act, are expressed. With State elections this fall, we all look forward to a unique and productive session in 2007.

We also highlight in this issue recent legislative successes from across the country—from landmark insurance legislation in Massachusetts to a fire-safe cigarette law in Illinois and a clean indoor air law in Hawaii. Not only does success in other states encourage and inform our efforts in Maryland, passage of these laws provides incentive for the Maryland General Assembly to catch up to the curve in public health and public safety legislation.

The Center, almost five years old, will be expanding this year to provide even more service to the state and local tobacco control and public health community. News on new hires and new projects will be forthcoming. On a sad note, however, the Center bids farewell to Research Fellow, Kris Callahan, who will be relocating to Colorado with her family in July.

Kathleen Hoke Dachille
Center Director

Massachusetts Law Encourages Healthy Behaviors by Allowing Premium Discounts for Non-smokers

Massachusetts passed a landmark health care bill in April, signed by Republican Governor Mitt Romney, which requires all residents of the state to have health insurance by July 1, 2007.¹ This is a comprehensive and lengthy bill, the first of its kind, containing numerous innovative provisions for which the bill has garnered national media attention. Although perhaps less widely publicized, included in the comprehensive bill are two additional provisions relating to small group and individual policies and Medicaid coverage that are of particular interest to the public health and tobacco control community.

The new law permits private health insurers to offer discounted insurance premiums to non-smokers on small group and individual policies. Prior to the new legislation, small group and individual insurers in Massachusetts were not permitted to consider smoking status when determining health insurance premiums. Insurance premiums for large groups are

set by considering the medical and claims history of the group members and many large employers already offer discounts to employees for wellness goals, such as smoking cessation. Numerous national employers charge increased premiums to those who use tobacco products while some national employers such as Weyco, Inc., Union Pacific and Alaska Airlines have even instituted hiring policies indicating that they would no longer employ tobacco users. Some states have recently started charging State employees who smoke a surcharge on insurance costs. These trends recognize the inherent increased health insurance costs and decreased productivity associated with a smoking workforce.

It is unclear at this point whether health insurers in Massachusetts will require an insured to submit to testing to prove non-smoker status before charging the lower premium. The Massachusetts legislature directed the Division of

Continued on page 3

Tobacco Regulation Review
is published twice a year by the
Legal Resource Center for
Tobacco Regulation, Litigation &
Advocacy

at the
**University of Maryland School
of Law**
500 West Baltimore Street
Baltimore, MD 21201
410/706- 0584 (office)
410/706-1128 (fax)

STAFF

Kathleen Hoke Dachille, JD
Director

Michael F. Strande, JD
Managing Attorney

Kristine Callahan, JD
Research Fellow

Megan McDonald
Administrative Assistant / Editor

AFFILIATED FACULTY

Diane E. Hoffmann, JD, MS
Associate Dean & Director,
Law and Health Care Program

Robert V. Percival, JD
Director,
Environmental Law Program

Allyn Taylor, JD, LLM, JSD
Adjunct Professor of Law

David Mann, MD, PhD
Instructor,
School of Medicine, Department
of Epidemiology



In This Issue

Massachusetts Law Encourages Healthy Behaviors by Allowing Premium Discounts for Non-smokers.....1

• Maryland Happenings

- Howard and Charles Counties Strengthen Local Smoking Restriction 4
- Maryland AG Sues Tobacco Manufacturers for MSA Payment 6
- Maryland AG Settles with CVS on Youth Tobacco Sales.....7
- Center Director Speaks with MD/DC Respiratory Care Professionals..... 7
- Comptroller Suspends Tobacco Retailers' License.....8

• 2006 General Assembly Session 9

• Inside the Center

- Farewell to Kris Callahan.....12
- Center Weighs in as Amicus Curiae.....12

• National News

- Fire Safe Cigarette Movement Spreading Like.....13
- Update on Clean Indoor (and Outdoor!) Air Laws From Around the Country.....14
- Seattle Youth Conference a Success15
- Another TCLC Law Synopsis Available15
- Smoke Free Pledge.....16

If you would like to to subscribe to the Tobacco Regulation Review please send an email to tobacco@law.umaryland.edu. Please include your mailing address.

Prinergy SheetMark-Color-Comp

Process Template: OutputPDF-Low Res
 Date: 06-07-17
 Time: 16:52:19
 Color: **Magenta**
 Surface Name: Front

OK to proceed
 Make corrections and proceed
 Make corrections and show another proof

Signed: _____ Date: ____ Operator: _____

Continued from page 1

Insurance to craft regulations containing the parameters of the new program, to include how insurers could definitively ascertain whether or not an insured had used tobacco products within the last year. The anticipated regulations will also determine the extent to which tobacco use may be factored into setting health insurance premiums.

In addition to discounts for non-smokers, the law also allows private insurance companies to increase the discounts that were previously permitted and capped at five percent for enrollees who participate in other wellness incentives, such as the completion of weight loss programs or enrollment in exercise classes.

The wellness portion of the new law is primarily aimed at reducing smoking rates in the Medicaid population. The Commonwealth's Department of Public Health estimates that although 17 percent of Massachusetts residents covered by private insurance smoke, 37 percent of the uninsured and 39 percent of Medicaid recipients are smokers. In addition to the discounts available to those with private insurance, the new law also provides discounts on

premiums and copayments for Medicaid recipients meeting specified wellness goals, such as smoking cessation. The law also allocates \$14 million over the next two years in new funding for smoking cessation programs for Medicaid recipients. This amount is sufficient to permit the state to offer smoking cessation programs to nearly all of the state's Medicaid recipients who smoke.

At least two other states, Iowa and Michigan, offer discounts to Medicaid enrollees to encourage healthy habits and Massachusetts' legislation signals a trend in this area and a recognition that providing health care coverage for smokers is costly. Estimates by the Massachusetts' legislative staff identified smoking-related medical costs for Medicaid recipients at \$700 million a year. As health care costs and health insurance premiums continue to spiral upward, employers and legislators will increasingly look for methods of reducing expenditures. Wellness programs and premium discounts provide the option to shift some of the health care expense associated with smoking to those who choose to engage in this costly behavior.

(Footnotes)

¹ Chapter 58, Mass. Acts of 2006. The nearly unanimous bill passed 154-2 in the House and 37-0 in the Senate. Republican Governor, Mitt Romney, vetoed unrelated portions of the bill, including a mandatory \$295 per employee surcharge on employers who do not offer health insurance to their employees.

DID YOU KNOW?

Maryland law requires health insurers to provide coverage annually for two 90-day cycles of prescription tobacco cessation drugs. This includes the newly approved drug, varenicline, shown to help more than 1 in 5 quit smoking. This is the second nicotine-free cessation drug to receive FDA approval.

MARYLAND HAPPENINGS

Howard and Charles Counties Strengthen Local Smoking Restrictions

In 1996, Howard County led the State in public health protections from secondhand smoke by passing the State's strongest smoking restriction, permitting smoking only in separately enclosed and ventilated bar areas. In subsequent years, Montgomery, Prince George's and Talbot Counties advanced the fight against secondhand smoke exposure by passing comprehensive smoking restrictions covering all enclosed public places, including bars and restaurants. On Monday, June 5, 2006, Howard County joined that list of tobacco control leaders by strengthening its law to prohibit smoking inside all enclosed public and work places, with no bar or ventilation exceptions. Consistent with the incremental approach taken in Howard and Talbot Counties, Charles County recently passed smoking restrictions prohibiting smoking in enclosed restaurants; there is already talk of seeking a more comprehensive law in the near future. The passage of these two laws brings the total of Maryland jurisdictions with local

smoking restrictions that are stronger than state smoking restrictions to five.

When Howard County passed its original smoking restrictions, a compromise solution limiting smoke to ventilated bar areas seemed to be a win-win solution. After nearly ten years of experience and additional scientific study, it became clear that separate ventilation does not protect the health of the restaurant workers and that the creation of separate

smoking sections does not effectively prevent smoke from drifting into the non-smoking sections. This led public health advocates and the County Executive, James Robey, to revisit the smoking ban and propose comprehensive protections prohibiting smoking in all public places and work places—with virtually no exceptions. The Robey bill was introduced in the fall of 2005.

After months of negotiations, the County Council amended Robey's original bill to include an


WARNING
Bartenders, Waiters, Waitresses

Secondhand smoke at work may cause
YOU to have a heart attack!

If you work in a bar or tavern that allows smoking, even in a separate room, you are at risk. According to the Centers for Disease Control, just 30 minutes of secondhand smoke exposure can trigger heart attacks. Ventilation systems can't protect you.

Worried? You should be. Call Smoke Free Howard County at 410-539-0872 ext. 354 to learn more.

Secondhand smoke.
We're all sick of it.



Continued on Page 5

<p>Prinergy™</p> <p><input type="checkbox"/> OK to proceed <input type="checkbox"/> Make corrections and proceed <input type="checkbox"/> Make corrections and show another proof</p> <p>Signed: _____ Date: _____</p>	<p style="text-align: right;">SheetMark-Color-Comp</p> <p>Process Template: OutputPDF-Low Res Date: 06-07-17 Time: 16:52:20 Color: Magenta Surface Name: Front</p> <p>Operator: _____</p>
---	--

Continued from page 4

implementation delay of four years, meaning that the health protections would not come into effect until 2010. That bill was passed by the Council. After weighing the issue carefully, Robey could not accept the significant delay in implementation and vetoed the bill in January 2006. Certainly Robey considered the fact that within the four year delay period, movement could be made to repeal the law and that a legal challenge to the new law could come after four years, bringing another delay. With Councilmen Ulman and Guzzone supporting stronger restrictions, and Councilmen Merdon, Feaga, and Rakes leaning against new restrictions, the issue appeared to be dead for the year. The deadlock was broken on March 31, when Rakes, a Democrat who regularly voted with the council's two Republican members, tendered his resignation citing health problems. His replacement, newly appointed Councilman Calvin Ball, openly expressed support for the expanded smoking ban.

With a 3-2 voting majority restored, Robey and Ulman introduced a new bill with a full ban starting June 1, 2007.

The bill, which has been praised by health advocates as much stronger than previous versions, was heard on May 15, 2006. The bill passed by the anticipated 3-2 vote on June 12, 2006. Executive Robey has stated he will sign the bill.


While Howard County was working to remove unwanted exemptions from its law, Charles County was seemingly following the example of passing compromise legislation that extends smoking protections without a complete ban on indoor smoking.

On Monday, May 1, 2006, Charles County enacted a local law prohibiting smoking in most enclosed public places, including all restaurants but excluding bars. The law, which will go into effect June 15, makes Charles County the fifth Maryland jurisdiction to enact smoking restrictions for restaurants which are stronger than State law.

In late March, the Charles County Commissioners held a public hearing on a proposed law prohibiting smoking in most enclosed public places, with exemptions for tobacconist establishments and stand-alone bars. The bill also prohibited self-service tobacco displays, requiring all tobacco retailers

to store and display tobacco products in a manner inaccessible to consumers without employee assistance. After receiving broad public support at the hearing and in dozens of written comments, the County Commissioners voted unanimously for passage of the local bill. This law will affect all restaurants in the county except those within the town of La Plata. As an incorporated municipality, La Plata has excluded itself from county smoking regulations, as permitted by State law.

Opinions on the new law were mixed, with restaurant owners expressing fear that the law will hurt business and frustration over the uneven playing field the law creates. While advocates celebrated the bill's passage and expressed gratitude for the extended health protections, they also criticized the bill for its failure to protect workers and patrons of certain bars. Sharing in their disappointment were lead sponsor Commissioner Robert Fuller and Commission President Wayne Cooper. Cooper indicated that he intends to continue his efforts and will try in the coming months to widen the ban to include stand-alone bars.

Prinergy TM		 SheetMark-Color-Comp	
<input type="checkbox"/> OK to proceed		Process Template: OutputPDF-Low Res	
<input type="checkbox"/> Make corrections and proceed		Date: 06-07-17	
<input type="checkbox"/> Make corrections and show another proof		Time: 16:52:20	
Signed: _____		Color: Magenta	
Date: _____		Surface Name: Front	
Operator: _____			

The Charles County law places an affirmative duty on restaurant owners and managers, requiring them to refuse to seat or serve any patron who violates the smoking provisions. Any person caught violating the law would be subject to escalating civil citations ranging from \$100 to \$300 dollars for a third or subsequent offense.

With the strengthening of Howard County's law and the passage of new smoking restrictions in Charles County, Maryland continues to move closer to providing indoor smoking protections for all of its residents. These successes not only increase smoking protections for local residents, but help build momentum for a statewide smoking ban which will once again be debated in the 2007 General Assembly session.

Breaking News!

Prior to publication of this newsletter, the Town of La Plata introduced a bill seeking to restrict smoking in public places within the town limits. *Tobacco Regulation Review* will continue to cover the progress of this initiative.

Maryland AG Sues Tobacco Manufacturers for MSA Payment

Maryland Attorney General J. Joseph Curran, Jr., announced that the State of Maryland has filed motions to enforce the Master Settlement Agreement (MSA) against R.J. Reynolds and Lorillard Tobacco Corporation for failure to make full settlement payments. RJR and Lorillard withheld more than \$17 million in funds from Maryland, but the total amount of money in dispute is much higher, ranging from approximately \$26 million to \$145 million.

In 1998, the major tobacco manufacturers agreed to pay more than \$206 billion over 25 years to 46 states, including Maryland, in settlement of litigation seeking reimbursement of state paid medical costs for treating smoking-related illnesses. The MSA, a court-approved agreement between those manufacturers and the settling states, requires participating manufacturers to make payments to the states based on a complex formula. On April 17, 2006, R.J. Reynolds and Lorillard made a decreased payment into an account, making it unavailable to the State, claiming settlement provisions entitle it to do so.

The MSA contemplates a reduction of payments if a three-part test is met. First, the companies must show that they have lost market share. Second, they must show that the settlement was a "significant

factor" in this loss. Third, the companies must show that the State has not diligently enforced its obligations under the settlement. R.J. Reynolds and Lorillard complain that their collective market share has fallen from 99.6% in 1997 to 92% in 2003, and that Maryland did not diligently enforce state laws requiring companies that did not join the MSA to place similar amounts into escrow. The companies claim these circumstances make reduced payments appropriate under the terms of the agreement.

On March 28, 2006, Reynolds and Lorillard passed the first two hurdles in legitimizing their decreased payments when an independent arbiter found the marketing restrictions imposed on participating manufacturers by the MSA were a "significant factor" in their loss of market share to smaller manufacturers who never signed onto the agreement. The remaining issue is the state's diligent enforcement.

Attorney General Curran strongly disputes the tobacco companies' claim that Maryland has not diligently upheld its part of the agreement. The settlement requires states to pass and enforce laws requiring any existing or future cigarette makers who did not sign onto the agreement to make payments roughly equal to the amount they would have to pay under the MSA. Those accounts are to be held in escrow for 25 years. Maryland has passed such a law and, Attorney General Curran argues, has enforced it to the fullest extent possible.

Continued on Page 7

Prinergy		SheetMark-Color-Comp	
<input type="checkbox"/> OK to proceed		Process Template: OutputPDF-Low Res	
<input type="checkbox"/> Make corrections and proceed		Date: 06-07-17	
<input type="checkbox"/> Make corrections and show another proof		Time: 16:52:20	
Signed: _____		Color: Magenta	
Date: _____		Surface Name: Front	
Operator: _____			

Continued From Page 6

The standard by which a court or arbiter will determine whether Maryland has “diligently enforced” the escrow statute is unknown. No procedure for making this determination is set forth in the MSA, and no court decisions have been rendered on this point. While the courts will ultimately decide whether full payment must be made, experts have opined that proving lack of diligence on the part of the State will be difficult for the tobacco companies.

The only certainty in the current case is Attorney General Curran’s commitment to ensuring Maryland receives the full payments it is entitled to under law. Maryland has used its MSA money to fund the Tobacco Use Prevention and Cessation Program, the Cancer Prevention, Education, Screening, and Treatment Program, and other State programs that serve vital public health and tobacco prevention purposes. Any reduction in those funds will be to the detriment of these important programs, research and treatment.

Maryland AG Settles with CVS on Youth Tobacco Sales

Maryland Attorney General J. Joseph Curran, Jr., took lead in national efforts resulting in the signing of an agreement with CVS Pharmacy under

which the drug store chain will implement new procedures to reduce sales of cigarettes to minors at its retail stores. The agreement requires CVS to follow specific “best practices” including:

- Check the ID of any person purchasing tobacco products when the person appears to be under the age of 27, and accept only valid government-issued photo ID as proof of age.
- Prohibit self-service displays of tobacco products, the use of tobacco vending machines, distribution of free samples, sale of cigarette look alike products, and the sale of smoking paraphernalia to minors.
- Hire an independent entity to conduct random compliance checks.
- Limit tobacco signage to brand names, logos, other trademarks, and pricing, and ensure that all tobacco advertising inside the store is confined to the area where tobacco products are sold.
- Train employees on state and local laws and company policies regarding tobacco sales to minors.

The CVS “Assurance of Voluntary Compliance” is the eighth such agreement, with similar agreements covering 7-Eleven, Wal-Mart, Walgreens and Rite Aid stores, and all gas

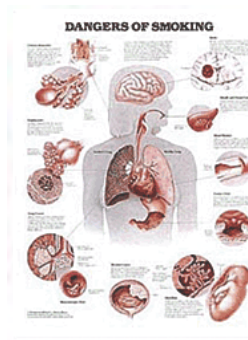
stations and convenience stores operating under the Conoco, Phillips 66 or 76, Exxon, Mobil, BP, Amoco, and ARCO brand names.

Center Director Speaks with MD/DC Respiratory Care Professionals

On May 24, Center Director, Kathleen Dachille, spoke at the annual meeting of the MD/DC Respiratory Care Professionals about the impact of secondhand smoke on individuals with respiratory ailments. Dachille discussed how and why comprehensive clean indoor air laws best serve this patient population. Encouraged by the audience’s understanding of the health risks of exposure to secondhand smoke, particularly for their patients with respiratory illnesses,

Dachille suggested that the group as an organization and attendees as individuals participate in the campaign to secure comprehensive

clean indoor air legislation in Maryland in 2007. As a result, the organization has decided to provide information to its members via newsletter and website to encourage support of the campaign.



Prinergy TM	SheetMark-Color-Comp	
	Process Template: OutputPDF-Low Res	Date: 06-07-17
<input type="checkbox"/> OK to proceed		Time: 16:52:20
<input type="checkbox"/> Make corrections and proceed		Color: Blk
<input type="checkbox"/> Make corrections and show another proof		Surface Name: Front
Signed: _____	Date: ____	Operator: _____

Comptroller Suspends Tobacco Retailer's License For Illegal Sales to Minors

Exercising its authority under Title 16 of the Business Regulations Article, the Office of the State Comptroller of Maryland has suspended the license of tobacco retailers who have sold tobacco to minors. During the 2004 and 2005 sessions of the General Assembly, Delegate Cardin, with assistance from the Legal Resource Center, proposed legislation that would have set parameters for such actions (see Legislative Update in Volume 4, Issue 2 of Tobacco Regulation Review). Although that legislation failed, the experience opened the conversation between the comptroller and local law enforcement authorities about how and when administrative action should be taken.

The end result of the discussions is that several local health departments have instituted a program through which tobacco retailers failing

local tobacco sales inspections more than once in a two year period are referred to the Comptroller. The Comptroller has reviewed a number of such referrals and in



those instances deemed appropriate the Comptroller has levied additional penalties after administrative hearing. In addition to monetary fines, at least four retailers have had their tobacco retailer license suspended for a period of four to seven days.

Just as the local enforcement programs, the Comptroller's administrative process is designed to discourage retailers from selling tobacco to minors; this contributes to a reduction in youth tobacco use. The administrative hearings demonstrate the Comptroller's commitment to the community and stand as clear warning to the retail community that the sale of tobacco to kids will not be tolerated. Local health departments and tobacco control advocates alike are hopeful the added threat of license suspension and revocation will reduce the number of recalcitrant retailers who have openly and willingly violated youth tobacco sales restrictions in the past.

Should you have any questions about referring Maryland tobacco retailers to the State Comptroller, please contact the Legal Resource Center for assistance.

2006 GENERAL ASSEMBLY SESSION

LEGISLATIVE WRAP-UP

A regular feature of Tobacco Regulation Review is a summary of the past General Assembly session. This section presents information about recently enacted tobacco control laws as well as bills which were introduced, but failed to gain passage.

The opening day of any given General Assembly session is normally a festive occasion; a time of pomp and celebration before embarking on a frenetic 90 days of bill hearings and partisan politics. But the opening of the 2006 session, the final year of an election cycle under the first Republican Governor in nearly 3 decades, was anything but normal. The session opened with heavy partisan bickering and veto overrides and, thanks to November's general elections, it ended the same way. Hot button topics ranged from stem cell research, to utility rate increases, to education. Despite the focus on these and other high profile issues, legislators and advocates were successful in keeping tobacco control as a prominent public health concern and advancing their goal of reducing pain and suffering caused by use of tobacco products. The

following is a brief summary of each tobacco control bill introduced and its ultimate disposition.

Senate Bill 110/House Bill 150 – the Budget Reconciliation Act of 2006.

After 3 years of reduced funding due to budget shortfalls, the Cigarette Restitution Fund Program saw a return to full funding as provided by statute. The full \$21 million was budgeted by the Governor and no money was removed during the General Assembly's review. This budget includes funding increases for a number of projects, including significant increases to local jurisdictions and new money for the creation, administration and marketing of a statewide quit line. This reaffirmation of the legislature's commitment to the State's tobacco control program is a huge victory for advocates at a time when other states are actively shifting funding away from tobacco control efforts.


Senate Bill 298/House Bill 375 - Clean Indoor Air Act of 2006. For the fourth year in a row a bill designed to close the loophole in current law which allows smoking inside enclosed bars and restaurants was introduced. The bill prohibited smoking in enclosed work and public places with few exceptions, and established a

dual enforcement mechanism by which the Department of Labor, Licensing and Regulation retained responsibility for protecting workers while the Department of Health and Mental Hygiene was given responsibility for protecting the public. The bill failed in the House Health and Government Operations Committee on an 11 to 11 vote, with one excused absence and a routine abstention by the chairman. The Senate Finance Committee failed to vote on the bill given its failure to move through the House of Delegates. Despite failing to gain passage, the bill picked up a number of votes and came closer to passage than in previous years. A similar bill will be introduced in the upcoming 2007 session, with certain key legislators announcing they will reconsider their votes at that time.

House Bill 1300 - Cigarette Fire Safety Standards and Fire Fighter Protection Act.

This bill required all cigarettes sold in Maryland to meet the same standards with regard to "ignition propensity" as cigarettes sold in California, New York, and Vermont. Currently, New York requires all cigarettes sold in state to self-extinguish prior to burning their

Continued on Page 10

Prinergy TM		SheetMark-Color-Comp
	Process Template: OutputPDF-Low Res	
<input type="checkbox"/> OK to proceed	Date: 06-07-17	
<input type="checkbox"/> Make corrections and proceed	Time: 16:52:20	
<input type="checkbox"/> Make corrections and show another proof	Color: Magenta	
Signed: _____	Surface Name: Front	
Date: _____	Operator: _____	

Continued from Page 9

entire length if not actively smoked. This technology has been shown to help reduce fires caused by unattended cigarettes left smoldering on combustible materials (see related story in *Tobacco Regulation Review* Volume 4 Issue 1, page 10). A similar bill was introduced last year, but was withdrawn by the bill sponsor, Delegate Brian Moe, so additional study could occur. This year, Delegate Moe reintroduced the bill with the full support of the State Fire Marshal, local fire fighters, fire victim’s relatives and burn survivors, insurance companies, and a number of public interest organizations. The bill received a favorable vote from the House Economic Matters Committee and was overwhelmingly passed on the House floor by a vote of 124 to 12. After crossing over to the Senate, the bill was assigned to the Senate Finance Committee, where it received a favorable vote with some minor amendments (6 to 4 in favor, with one abstention). Unfortunately, the bill died without a final vote on the Senate floor when it was


delayed by opponents using procedural tactics to avoid a floor vote. Legislators, fire fighters and public health advocates have vowed to reintroduce this potentially life saving bill in the coming session (see page 13 for additional updates on fire safe cigarette legislation nationally).

House Bill 1333 - Supersedeas Bonds. This bill reduced the amount of a bond a party appealing a civil judgment must post. Currently, the law requires a party to post the full amount of any judgment prior to appeal, unless reduced by the presiding judge at his discretion given the facts and circumstances of a particular case. This bill set the maximum bond amount at \$75 million, regardless of the amount of judgment. The bill, driven by the tobacco industry and other large businesses as protection from sizable bonds required to appeal large awards, did not get out of the House Judiciary Committee. This is the third year in a row similar legislation has been defeated, leaving

Maryland as one of a handful of states without a cap on appeals bonds.

House Bill 1353 – Protection of Foster Children from Secondhand Smoke. This bill would have required the Social Services Administration to adopt regulations requiring foster care parents to protect children in foster care from exposure to secondhand smoke in enclosed places. Following the lead of a number of states who have promulgated regulations addressing smoking in foster homes (most comprehensively, Washington, Oklahoma and Maine), lead sponsor Delegate Cardin and 10 co-sponsors supported this initiative. Although the bill failed to get out of the House Judiciary Committee (13 to 4 against with 5 absences), the Department of Human Resources did testify in support of the bill and indicated a willingness to work on the issue administratively.

Continued on Page 11

Prinergy TM		SheetMark-Color-Comp
	<input type="checkbox"/> OK to proceed <input type="checkbox"/> Make corrections and proceed <input type="checkbox"/> Make corrections and show another proof	Process Template: OutputPDF-Low Res Date: 06-07-17 Time: 16:52:20 Color: Magenta Surface Name: Front

Continued from Page 10

House Bill 441 - Healthy Maryland Initiative. This bill proposed an increase to the tobacco tax on cigarettes and other tobacco products and an alteration to the distribution of tobacco tax revenues in order to expand health care access. The bill would have increased the cigarette tax by \$1.00, which in turn would have reduced smoking and raised an estimated \$150 million per year. This additional revenue would have been earmarked to expand Medicaid eligibility and help ease the program's chronic budget deficits, establish a pilot program to help small businesses with health insurance costs, and expand tobacco prevention funding to the CDC recommended minimum level of \$35 million. Despite the bill's defeat in front of a joint committee comprised of both the House Ways and Means and the House Health and Government Operations Committees, powerful supporters in the Service Employees International Union, AARP, and the Maryland Hospital Association have made this initiative a high priority for the coming session.


Senate Bill 797 /House Bill 1052 - Master Settlement Agreement Modifications.

This bill made technical changes to conform a prior enactment to the model language provided by the Master Settlement Agreement between the State of Maryland and participating tobacco manufacturers. The bill was unanimously passed by both chambers of the legislature and passed into law. While this was an innocuous change, it was necessary to ensure continued payments to the State by tobacco manufacturers.

CRF Diversions (generally).

A number of bills were introduced during the session which sought to tap into the cigarette restitution fund, permanently diverting monies away from tobacco use prevention and cessation and into any number of hot button issues like Medicare and stem cell research funding. These attempts to use the CRF as an available funding source for other pet projects were roundly defeated, keeping the portion of Master Settlement dollars reserved for tobacco control where it belongs.

At midnight on April 10, the 2006 General Assembly Session came to an end. Mindful of November's general elections, many members chose the status quo over the protection of public health through strong tobacco control legislation. Whether this move protects the reelection hopes of those incumbents or alienates health conscious voters will be seen. What is certain, however, is that a number of new legislators will be elected and the membership of the legislature's standing committees will change. Whether or not those changes will positively affect the fortunes of those tobacco control bills narrowly failing to gain passage are questions which not only bring hope to the advocacy community, but are sure to make the 2007 session an exciting one.

Prinergy TM		SheetMark-Color-Comp
	Process Template: OutputPDF-Low Res	
<input type="checkbox"/> OK to proceed	Date: 06-07-17	
<input type="checkbox"/> Make corrections and proceed	Time: 16:52:20	
<input type="checkbox"/> Make corrections and show another proof	Color: Magenta	
Signed: _____	Surface Name: Front	
Date: _____	Operator: _____	

INSIDE THE CENTER

Farewell to Kris Callahan

The Center staff wish a FOND farewell to Research Fellow Kristine Callahan, who is relocating with her family to beautiful, smokefree Colorado! Kris served as the Center Research Fellow for two years during which she assisted with all Center operations, including writing legal synopses and newsletter articles, advocating for legislation at the Maryland General Assembly, coordinating local tobacco enforcement efforts, and working with students on various research and writing assignments. We wish Kris good luck in her new home; she will be sorely missed.

Center Weighs in as Amicus Curiae in UST Class Action Settlement

A proposed settlement in a consumer protection class action case against United States Tobacco Company (UST) caught the attention of the Center and the Tobacco Public Policy Center at Capital University School of Law, resulting in the Centers' "Amicus Objection" to the proposed settlement in late October 2005. In brief, the class sought damages for antitrust behavior of UST over the course of many years. (See *Chance v. United States Tobacco Company, et al.*, Case No. 05-CV-112, District Court

for Seward County.) The proposed settlement called for the distribution of coupons for free UST products, a result that appears to be more a marketing scheme for UST than settlement of the underlying claims. The Centers' objection, filed on their own behalf and for the American Cancer Society and later joined by the Campaign for Tobacco-Free Kids, explained to the court why the settlement is contrary to public health and to state and federal laws designed to reduce tobacco use. Although the settlement has been pending for more than seven months, the court has yet to make a decision on the proposal. For a copy of the Centers' objections, contact Kathleen Dachille at kdachille@law.umaryland.edu.



(pictured left to right: Michael Strande, Kathleen Hoke Dachille, Kris Callahan, Megan McDonald)

Prinergy TM	<input type="checkbox"/> OK to proceed	Process Template: OutputPDF-Low Res
	<input type="checkbox"/> Make corrections and proceed	Date: 06-07-17
<input type="checkbox"/> Make corrections and show another proof	Time: 16:52:20	Color: Blauwta
Signed: _____	Surface Name: Front	Operator: _____
Date: _____		

NATIONAL NEWS

Fire-Safe Cigarette Movement Spreading Like . . .

The campaign to secure fire-safe cigarette legislation in every state in this country received a tremendous boost with the creation of the Coalition for Fire-Safe Cigarettes in March of 2006. The Coalition is comprised of fire service organizations, consumer and disability rights advocates, medical and public health practitioners and others interested in working on the Coalition's mission: "To save lives and prevent injuries and devastation from cigarette-ignited fires."¹ To accomplish the mission, the Coalition will work tirelessly with state and local advocates to gain passage of legislation mandating that cigarette manufacturers immediately begin producing and selling only fire-safe cigarettes. The Coalition likewise calls upon cigarette manufacturers to produce and sell only fire-safe cigarettes across the country and the world, regardless of whether a state or national law contains such a mandate.²

Although there have been efforts at securing federal legislation on this issue (see *Tobacco Regulation Review*, Vol. 4, Issue 1, page 10), the Coalition is working at the state level at least in the initial phase of the campaign. Because

most fire safety and tobacco legislation is passed at the state and local level, this approach recognizes the states' interest in and responsibility for protecting citizens from fire hazards and the states' expertise in regulating tobacco products. Model legislation drafted by the Coalition is recommended in each state so that the established cigarette fire safety standard is imposed effectively and uniformly across the country. Uniformity from state to state is important in fending off the tobacco manufacturers' valid concern about meeting different standards in various states.

Significant research on the efficacy of cigarettes meeting the fire safety standards and dismissing tobacco companies' hyperbolic concerns about alleged increased toxicity of fire-safe cigarettes can be found on the Coalition's website, which serves as an excellent resource for legislators or advocates interested in the issue. The website also tracks legislative proposals across the country, provides the opportunity for individuals to express their support for legislation via an online petition and contains a blog by which advocates can keep each other up to date.

No doubt the newly formed Coalition and its innumerable supporters played a role in securing fire-safe cigarette legislation in two additional states. While legislation had been passed in New York (2004), California (2005) and Vermont (2005) before the Coalition's formal existence, key advocates of the Coalition provided support in each of these states. Since the Coalition's launch in March 2006, two states have been added to this list: Illinois and New Hampshire. With 700 to 900 deaths, innumerable injuries to citizens and fire service personnel, and immeasurable property damage suffered nationally each year, this accomplishment is significant.

The Center will work closely with the Coalition in preparation for the 2007 session of the Maryland General Assembly. Delegate and Fire Fighter Brian Moe will introduce the Cigarette Fire Safety and Fire Fighter Protection Act again in 2007. With the support of the Maryland fire service community, consumer rights advocates, medical professionals, insurance companies, and the Coalition, we are optimistic that Maryland will soon benefit from a reduction in cigarette-caused

Continued on page 14

Prinergy TM		SheetMark-Color-Comp	
<input type="checkbox"/> OK to proceed		Process Template: OutputPDF-Low Res	
<input type="checkbox"/> Make corrections and proceed		Date: 06-07-17	
<input type="checkbox"/> Make corrections and show another proof		Time: 16:52:20	
Signed: _____		Color: Magenta	
Date: _____		Surface Name: Front	
Operator: _____			

Continued from Page 13

fires as a result of this common sense public safety legislation. If you are interested in joining the Coalition or expressing support for its mission, visit www.firesafecigarettes.org. To join the Maryland effort, contact Center Director, Kathleen Dachille at kdachille@law.umaryland.edu.

(Footnotes)

¹ Coalition Mission
www.firesafecigarettes.org

Member organizations include the National Fire Protection Association, AARP, American Burn Association, American and National Fire Sprinkler Associations, American Health Care Association, AMERIND Risk Management Corporation, ASTM International, Center for Campus Fire Safety, Center for Social Gerontology, Home Safety Council, International Association of Arson Investigators, International Association of Black Professional Fire Fighters,

International Association of Fire Chiefs, International Association of Fire Fighters, International and National Associations of Hispanic Fire Fighters, International Code Council, International and National Fire Marshals Associations, Metropolitan Fire Chiefs, National Association of EMTs, National Fallen Fire Fighters Foundation, National Native American Fire Chiefs Association, National Volunteer Fire Council, Public Citizen, Phoenix Society for Burn Survivors, Safe Kids Worldwide, Trauma Foundation, Uniform Fire Code Association, Washington State Association of Fire Chiefs, Western Fire Chiefs Association, Boston Society of Vulcans, Firemen's Association of the State of New York, Massachusetts Coalition for Fire-Safe Cigarettes and Tobacco-Free Kids.

² The Coalition's letter to cigarette manufacturers and the responses of RJ Reynolds, Philip Morris USA and Lorillard are available at:


<http://www.firesafecigarettes.org/categoryList.asp?categoryID=91&URL=Letter%20to%20tobacco%20companies>

Update on Clean Indoor (and Outdoor!) Air Laws From Around the Country

Since our last newsletter the following states have passed comprehensive smoke free indoor air legislation:

- Colorado (effective July 1, 2006)
- Hawaii (effective November 16, 2006)
- New Jersey (effective April 15, 2006)
- Utah (effective for restaurants May 1, 2006, extending to bars and private clubs on January 1, 2009)
- Washington D.C. (effective January 1, 2007)

While numerous municipalities have passed similar smoking bans, the City of Calabasas, California went one step further, passing the strongest smoking restriction in the country. The new law prohibits smoking in any public area, including outdoor places, where others can smell that smoke. Under the law, the only place smokers will be allowed public puffing in the presence of others is in designated smoking areas at shopping malls.

Prinergy TM		 SheetMark-Color-Comp	
<input type="checkbox"/> OK to proceed		Process Template: OutputPDF-Low Res	
<input type="checkbox"/> Make corrections and proceed		Date: 06-07-17	
<input type="checkbox"/> Make corrections and show another proof		Time: 16:52:20	
Signed: _____		Color: Magenta	
Date: _____		Surface Name: Front	
Operator: _____			

Seattle Youth Access Conference a Success

In April 2006, a national conference on youth access to tobacco allowed Center staff and dozens of tobacco control attorneys and advocates an opportunity to meet and discuss a wide variety of youth issues. Access Seattle 2006 was held in blustery but beautifully smokefree Seattle, Washington, April 12-14. Center Director, Kathleen Dachille, participated in a panel discussion addressing supply and demand issues; namely, Dachille discussed existing state and local laws imposing penalties on youth cited for possession or use of tobacco products. Assisted by then-third-year student, Brooke Courtney, Dachille compiled the existing laws and researched the public health and social sciences literature as to the impact certain penalties may have on youth demand for tobacco products. While much effort has been focused on decreasing the supply of tobacco to minors through retailer sting programs, little has been done to address the demand side—the kids. A dearth of research in the area is mismatched with the obvious level of interest in youth penalties as expressed during the post-presentation discussion period. Having gathered information, data and contact information from attorneys, advocates and researchers interested in the

issue, Dachille will continue to investigate the efficacy of various penalties and publish any results.

Center Managing Attorney, Michael Strande, likewise presented at the conference. Strande's presentation, entitled "The Regulation of Tobacco Advertising After *Lorillard v. Reilly*", explained in detail how and to what extent a state or local government may regulate tobacco advertising within the confines of the First Amendment and the Federal Cigarette Labeling and Advertising Act. While the *Lorillard* decision undoubtedly imposes severe restrictions on such regulations, creative legislation that would control tobacco advertising is still possible. Those in attendance at Strande's presentation—or who have reviewed his presentation on the Center website—now know of this possibility.

Perhaps the most unique and effective element of this conference is the post-conference follow-up. Not only did presenters receive significant feedback from attendees, the conference website hosts a blog for on-going discussion of issues raised at the conference. To view presentations or blog information, go to www.accessconference.org.

Another TLC Law Synopsis is Available

In January 2006, the Tobacco Control Legal Consortium published *Public Health Policy for Internet Cigarette Retailers* authored by Christopher Banthin of the Tobacco Products Liability Project. Banthin's well-written piece examines the problem raised by the proliferation of internet tobacco sellers and discusses how and to what extent state and federal laws can reduce the negative public health and economic effects of internet tobacco sales. To read Banthin's piece, go to www.tclconline.org.



Prinergy

- OK to proceed
 Make corrections and proceed
 Make corrections and show another proof

Signed: _____ Date: _____ Operator: _____

SheetMark-Color-Comp

Process Template: OutputPDF-Low Res

Date: 06-07-17

Time: 16:52:20

Color: Blinnsta

Surface Name: Front



Smoke-Free Air Resolution

For Individuals

- Because,** Secondhand smoke kills; and
- Because,** We all have the right to breathe clean, safe, smoke-free air; and
- Because,** Ventilation systems do not protect our families and workers from secondhand smoke; and
- Because,** Every independent study of communities with smoke-free laws shows that going smoke-free does not hurt restaurant business, bar business, or tourism;

I/My Family supports:

- 100% smoke-free indoor public places and workplaces, including eating and drinking establishments

Contact name <i>(please print)</i>	Number of Family Members	
Signature	Date	
Home Street Address	County	
City	State	Zip
Phone	Fax	
Email		

Best way to contact you: • Email • Phone • Fax

Return to: Smoke Free Maryland, 1211 Cathedral Street, Baltimore, MD 21201
OR fax to 410-547-0915

<input type="checkbox"/> OK to proceed <input type="checkbox"/> Make corrections and proceed <input type="checkbox"/> Make corrections and show another proof Signed: _____ Date: _____	SheetMark-Color-Comp Process Template: OutputPDF-Low Res Date: 06-07-17 Time: 16:52:20 Color: Black Surface Name: Front Operator: _____
--	--