

MEMORANDUM

October 16, 2012

TO: Health and Human Services Committee

FROM: Linda McMillan, Senior Legislative Analyst *Linda McMillan*
Amanda Mihill, Legislative Attorney *Amanda Mihill*

SUBJECT: **Discussion: Health Risks of Smoking**

Expected for this session:

Uma Ahluwalia, Director, Department of Health and Human Services (DHHS)
Dr. Ulder Tillman, Montgomery County Health Officer
Ron Bialek, Vice-Chair, Commission on Health
Karin, Appler, Federal Food and Drug Administration
Betsy Brown, Director of Curriculum and Instruction, Health and Physical Education,
Montgomery County Public Schools (MCPS)
Kathie Durbin, Chief of Licensure, Regulation, and Education (Liquor Control)

1. Letter from Commission on Health

This past June, the Commission on Health wrote to the Council voicing its support for the County's current efforts to restrict smoking and highlighting the connection between smoking restrictions and decreased heart attack rates (letter attached © 1-3). The Commission recommends the following as ways to further lower the smoking rate in Montgomery County:

- Advocate for increased cigarette taxes.
- Request that MCPS periodically review their anti-smoking programs and provide measurement of program effectiveness.
- Review the rules and regulations on placement of tobacco products in stores.
- Increase access to smoking cessation programs by increasing the budget for DHHS programs.

- Increase enforcement of current smoking laws, including allowing the Police to assist the Department of Liquor Control and DHHS with enforcement.
- Expand smoking bans to prohibit smoking along store fronts and covered walkways such as those in strip malls and shopping centers (the Commission noted State of Hawaii and Arizona rules.)
- Require business and multi-family dwellings to provide “smoking areas” away from the general public to reduce exposure to secondhand smoke. This would include prohibiting smoking within a certain distance of doorways, windows, and air-intakes as is done in San Jose.

HHS Committee Chair Leventhal asked that the HHS Committee meet to: (1) discuss the Commission’s recommendations, (2) review current Federal, State, and County law, (3) hear from the Federal Food and Drug Administration on their policy toward regulating tobacco and any limitations the FDA may place on a locality, and (4) hear from DHHS, DLC, and MCPS representatives regarding the prevention, educations, and enforcement suggestions made by the Commission.

Commission on Health Vice-Chair Ron Bialek will provide the Committee with a brief overview of the Commission’s concerns and recommendations. The Commission’s presentation slides are attached at © 4-9.

2. Discussion with Federal Food and Drug Administration and Review of Federal, State and County Law

Ms. Karin Appler of the Food and Drug Administration has been asked to provide the Committee with comments on FDA authority and any restrictions it may place a local government’s ability to restrict or regulate smoking.

As background, the following information has been compiled by Legislative Attorney Mihill.

A. Federal Law

There are two primary federal laws that relate to regulating tobacco: The Family Smoking Prevention and Tobacco Control Act (2009) and The Federal Cigarette Labeling and Advertising Act of 1965 (as amended in later years). Each of these laws are discussed below.

What does the Family Smoking Prevention and Tobacco Control Act require?

The Family Smoking Prevention and Tobacco Control Act gives the U.S. Food and Drug Administration (FDA) the authority to regulate the manufacturing, marketing, and sale of tobacco products. Prior to this law, the FDA did not generally have that authority. Among other provisions, this Act:

- gives the FDA exclusive authority to establish tobacco product standards
- bans flavored cigarettes

- requires graphic warning labels on cigarette and smokeless tobacco products
- prohibits the use of the words “light”, “mild”, and “low tar” on tobacco products
- prohibits brand sponsorship of certain entertainment events
- bans the sale of cigarettes in packages less than 20
- establishes a nationwide minimal age (18) for cigarette and smokeless tobacco sales

This Act also limits the FDA’s authority in some respects, including prohibiting the FDA from banning tobacco products, requiring the removal of nicotine, or increase the federal minimum age to purchase these products. A condensed overview of this Act is available on © 10-12.¹

What does the Federal Cigarette Labeling and Advertising Act of 1965 (as amended) require?

When enacted, this Act required health warnings on cigarette packages and the Federal Trade Commission (FTC) enforced this requirement. Later amendments covered tobacco advertisements, and prohibited certain ads to be shown in certain media, and required warnings for smokeless tobacco. The Family Smoking Prevention and Tobacco Control Act gave the FDA the authority to approve cigarette and smokeless tobacco warning statements. The FTC retains authority regarding unfair business practices.² The Family Smoking Prevention and Tobacco Control Act requires additional information to be printed on cigarette packages, including additional warning statements and graphic images that must cover 50% of the front and back of cigarette packages and 30% of the principal panels of smokeless tobacco products.

What do these laws say about preemption?

State and local governments retain considerable authority in the area of tobacco regulation. Federal law specifically states that the Family Smoking Prevention and Tobacco Control Act cannot be construed to “limit the authority of a . . . State or political subdivision of a state . . . to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to, or more stringent than” the requirements of the Act, including laws “relating to or prohibiting the sale, distribution, possession, exposure to, access, to advertising and promotion of, or use of tobacco products by individuals of any age, information reporting to the State, or measures relating to fire safety standards for tobacco products.”³

The Act does expressly preempt a state or political subdivision from having, for a tobacco product, “a requirement that is different from, or in addition to, any requirement . . . relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products.”⁴ However, this

¹ Several provisions of the Family Smoking Prevention and Tobacco Control Act are being challenge in federal court.

² For more details about the FTC’s authority over tobacco regulation, see the Tobacco Control Legal Consortium’s report, “The Federal Trade Commission and Tobacco” at <http://publichealthlawcenter.org/sites/default/files/resources/tclc-fs-ftc&tobacco-2012.pdf>.

³ 21 U.S.C. §387p(a)(1).

⁴ 21 U.S.C. §387p(a)(2)(A).

preemption provision “does not apply to requirements relating to the sale, distribution, possession, information reporting to the State, exposure to, access to, the advertising and promotion of, or use of, tobacco products by individuals of any age, or relating to fire safety standards for tobacco products.”⁵

The Act grants state and local governments additional authority in the area of advertising. Prior to this Act, state and local governments were preempted from enacting laws restricting cigarette advertising and promotion for health reasons. The Act loosens these preemptions and authorizes a state or local government “enact statutes and promulgate regulations, based on smoking and health . . . imposing specific bans or restrictions on the time, place, and manner, but not content of, the advertising or promotion of any cigarettes.”⁶

To summarize, generally speaking, federal law grants state and local governments wide authority to enact or adopt tobacco control actions that are more stringent than federal law, but preempts them from regulating the tobacco product itself.

B. State Law

In addition to other miscellaneous provisions in state law, two regulatory schemes are particularly important regarding tobacco control: the Clean Indoor Air Act and the cigarette licensing law.

What does the Clean Indoor Air Act provide for?

The Clean Indoor Air Act of 2007⁷ prohibits smoking in:

- an indoor area open to the public;
- an indoor place in which meetings are open to the public as required by the State Open Meetings law;
- a government-owned or government-operated means of mass transportation; and
- an indoor place of employment.

“Indoor area open to the public” is defined as “an indoor area or a portion of an indoor area accessible to the public by either invitation or permission” or “an indoor area of any establishment licensed or permitted under Article 2B” for the sale or possession of alcohol. The Act does not apply to:

- private homes, residences, unless being used by a person licensed to provide child care;
- private vehicles, unless being used for the public transportation of children, or as part of health care or child care transportation;
- a hotel/motel room if the number of smoking rooms does not exceed 25%;
- a retail tobacco business;
- facilities for manufacturing, importing, wholesaling, or distributing tobacco products; or

⁵ 21 U.S.C. §387p(a)(2)(B).

⁶ 15 U.S.C. §1334(c)

⁷ Maryland Code, *Health – General* article, §§24-501–24-511.

- a research or educational laboratory used to conduct scientific research into the health effects of tobacco smoke.

Enforcement authority is granted to the Department of Health and Mental Hygiene for public areas (which delegates this authority to local departments) and the Department of Labor, Licensing, and Regulation for workplace areas that are not open to the public. A public guide discussing the Clean Indoor Air Act is on © 13-14.

What does the cigarette licensing law require?

Title 16 of the *Business Regulation* Article of the Maryland Code regulates cigarettes.⁸ This Title:

- requires a person to have a cigarette license to act as a manufacturer, retailer, storage warehouse, subwholesaler, vending machine operator, or wholesaler (with limited exceptions);
- requires a person to have a county license to sell cigarettes at retail;
- with limited exception, prohibits the use of vending machines for tobacco products;
- establishes an escrow fund for tobacco companies to contribute to, and which can be used for the payment of a judgment or settlement; and
- establishes fire safety performance standards for cigarettes.

Title 16.5 of the *Business Regulation* Article of the Maryland Code regulates cigars. With limited exceptions, this title requires a person to have a license when acting as a licensed other tobacco products manufacturer, retailer, storage warehouse, wholesaler, or licensed tobacconist in the state. “Other tobacco products” is defined as a cigar or roll for smoking, other than a cigarette, or any other tobacco product made primarily from tobacco, other than a cigarette, that is intended for consumption by smoking or chewing or as snuff.

What do these laws say about preemption?

Under state law, counties retain considerable authority. In fact, the Clean Indoor Air Act specifically states that the Act cannot be construed to “preempt a county . . . from enacting and enforcing more stringent measures to reduce involuntary exposure to environmental tobacco smoke.”⁹

There is no general preemption language in Title 16 of the *Business Regulation* Article of the Maryland Code.¹⁰ However, court cases and attorney general opinions have established certain preemption principles:

⁸ §§16-101 – 16-610.

⁹ The regulation implementing the Clean Indoor Air Act also specifies that the Act doesn’t preempt counties from adopting more stringent measures to “protect the public from involuntary exposure to environmental tobacco smoke in indoor areas open to the public.” COMAR 10.19.04.01(B).

¹⁰ In an uncodified provision of Subtitle 6, which establishes fire safety performance standards for cigarettes states that the Act “preempts any local law, ordinance, or regulation that conflicts with any provision of this Act or any policy of the State implemented in accordance with this Act and, notwithstanding any other provision of law, a governmental unit of this State may not enact or enforce an ordinance, local law, or regulation conflicting with or preempted by this Act.

- The General Assembly has not preempted the field of cigarette advertising.¹¹
- Implied preemption exists regarding the sale of cigarettes through vending machines.¹²
- A proposed law prohibiting the sale of cigars in packages less than 5 is not preempted.¹³
- A proposed law prohibiting the emission of air pollutants, including cigarette smoke, from crossing private property lines would not be preempted.¹⁴

C. County Law

A concise history of the County’s smoking laws is on © 15-16. County law prohibits smoking in many locations, including:

- most elevators;
- most health care facilities;
- public schools, including Montgomery College;
- buildings owned or lease by the County;
- theaters, movie theaters, enclosed auditoriums;
- County government workplaces;
- businesses open to the public;
- restrooms;
- indoor common areas of multi-family dwellings; and
- certain playgrounds.

Locations that are excepted from these requirements include:

- tobacco shops;
- scientific research;
- private residence not open to the public;
- up to 40% of motel rooms
- bar and dining areas of clubs.¹⁵

In addition to these smoke-free places, County law prohibits the distribution of tobacco products to minors,¹⁶ and prohibits sellers from displaying tobacco products in a place that is accessible to buyers without the intervention of the seller.¹⁷

3. Tobacco Use and Prevention – DHHS Programs

Dr. Ulder Tillman, County Health Officer, will provide the Committee with an overview of the prevalence and trends for tobacco use and a history of the changes in the funding available

¹¹ *Penn Advertising of Baltimore, Inc. v. Mayor and City Council of Baltimore*, 101 F.3d 332 (4th Cir. 1996).

¹² *Allied Vending, Inc. v. City of Bowie*, 332 Md.279 (1993).

¹³ 93 Op. Att’y Gen. Md. 149 (2008). Councilmembers should note that in 2010, the General Assembly enacted legislation that established a licensing regime for “other tobacco products”. This legislation, and whether or not it preempts the field, is the subject of a current court case. This case, *Altadis USA v. Prince Georges County*, was argued in the Court of Appeals in early 2011, but a decision has not been rendered.

¹⁴ 87 Op. Att’y Gen. Md. 167 (2002).

¹⁵ Montgomery County Code §24-9; Council Resolution 14-70

¹⁶ Montgomery County Code §24-9(C).

¹⁷ Montgomery County Code §24-9(D).

to provide prevention and cessation programs. The DHHS slides are attached at © 17-27. The Committee will note that the loss of funding has come in three areas: (1) Community Education and Outreach, (2) School-Based Education and Cessation, and (3) Enforcement and Merchant Education.

4. MCPS Policies on the use of Tobacco in MCPS Facilities and K-12 Tobacco Prevention and Cessation Programs

MCPS has been asked to provide the Committee with information on the policies regarding the use of tobacco in MCPS facilities, both schools and non-school buildings.

In addition, Ms. Betsy Brown, Director of Curriculum and Instruction, Health and Physical Education, will provide the Committee with an overview of the K-12 curriculum that is currently in place to education students about the dangers of tobacco and to prevent them from its use.

5. Department of Liquor Control Tobacco Enforcement

Ms. Kathie Durbin, Chief of Licensure, Regulation, and Education will provide the Committee with an overview of the enforcement of current regulations about the sales and placement of tobacco products. Presentation slides are attached at © 28-34. The Committee will hear about the program that uses underage volunteers to check vendor compliance. In FY 2012, the vendors that were tested had a 79% compliance rate with about half of those not in compliance making the sale even after checking the identification.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

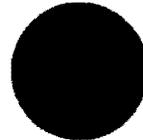
Isiah Leggett
County Executive

Uma S. Ahluwalia
Director

June 21, 2012

Roger Berliner, President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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Dear Council President Berliner,

The Commission on Health strongly supports Montgomery County's previous efforts to restrict smoking. The 2003 and 2011 smoking bans protect Montgomery County residents from health complications caused by exposure to secondhand smoke. The negative economic consequences anticipated by pro-smoking advocates have not materialized. In fact in 2005, Councilman Andrews testified to the Maryland Senate Finance Committee that restaurant sales tax receipts were up 7.6% in the first year after the ban.

The connection between smoking bans and decreased heart attack rates has been firmly established. The Institute of Medicine Committee on Secondhand Smoke Exposure and Acute Coronary Events recently issued a comprehensive review of the scientific literature on the connection between secondhand smoke and acute coronary events¹. The review identified eleven observational studies on the effects of smoking bans. These studies consistently show that after smoking bans are implemented, the rate of heart attacks decrease. Even though the smoking bans in the studies are implemented differently, a causal relationship between smoking bans and decreases in the rate of heart attacks can be concluded.

Despite significant progress, we remain deeply concerned about the effects of smoking and secondhand smoke on our fellow citizens. According to the Centers for Disease Control and Prevention (CDC) approximately 8% (5.5-10.5) of County residents smoke. The smoking rates reported by the CDC agree with the Maryland Adult Tobacco Study² (MATS) and the 2010-2012 County Health Rankings and Roadmaps³. These studies show that tobacco use by Montgomery County adults, although the lowest in the state, has remained stagnant since 2000. Healthy Montgomery reports 15.5% of people aged

¹ IOM (Institute of Medicine). 2010. *Second Hand Smoke Exposure and Cardiovascular Effects: Making Sense of the Evidence*. Washington DC: The National Academies Press.

² Maryland Department of Health and Mental Hygiene. *Monitoring Changing Tobacco-use Behaviors in Maryland*, November, 2007.

³ <http://www.countyhealthrankings.org/app/maryland/2012/montgomery/county>

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12 or older smoke cigarettes, which could indicate an area of concern⁴. The result is based on the *National Survey on Drug Use and Health*, which measured cigarette smoking in the months prior to the survey as opposed to self-reported smokers.

Reaching an even lower smoking rate is important because of the major expense involved in treating smoking-related diseases. The State of Maryland estimated in 2004 that medical treatments of smoking related diseases will cost the Maryland economy over \$2 billion annually, and that 60% of the medical expenses are paid by government health plans (Medicare/Medicaid). Medical expenses cost the State of Maryland approximately \$7.40 per pack.

The Commission on Health recommends the County Council and County Executive take action to lower the smoking rate in Montgomery County. We recognize that the County is not currently in a position to completely ban smoking, although we applaud the idea. Instead, the Commission supports the following recommendations based on recommendations from the Institute of Medicine⁵.

- Advocate for increased cigarette taxes – We encourage our community leaders to advocate for cigarette tax increases at the state and federal level. Such efforts by our leaders, in the past, have been very effective. The tax on cigarettes in New York City is \$6.46 per pack, and the smoking rate has declined from 22% in 2002 to 14% in 2011 and from 18% to 7% in teenagers.
- Limit youth access to cigarettes to prevent smoking initiation
 - The Montgomery County Public Schools should periodically review its anti-smoking programs, and provide the County School Board and County Council statistics measuring the effectiveness of its programs.
 - The County should review rules and regulations on placement of tobacco products in stores.
- Increase access to smoking cessation programs by increasing the budget for the DHHS Tobacco Use Prevention and Cessation programs.

Additionally we recommend:

- Greater enforcement of current smoking laws. This may include changes to allow county police assist DHHS and the Department of Liquor Control in the enforcement of smoking laws and tobacco placement regulations.
- County Council expansion of the smoking ban to **prohibit** smoking along store fronts and covered walkways such as at strip malls and shopping centers. Other locations ban smoking around location where smoking is prohibited including:
 - The State of Hawaii prohibits smoking within a “Presumptive reasonable distance” of 20 feet distance from entrances, exits, windows, and air intake of location where smoking is prohibited.
 - The State of Arizona Rule R9-2-102 also prohibits smoking with 20 feet from a location where smoking is banned.

⁴ <http://www.healthymontgomery.org/modules.php?op=modload&name=NS-Indicator&file=indicator&iid=309>

⁵ IOM (Institute of Medicine). 2007. *Ending the tobacco problem: A blueprint for the nation*. Washington, DC: The National Academies Press.

- Establishment of a new County **requirement** for businesses (including multi-dwelling units) to provide “smoking areas” away from the general public to limit exposure to secondhand smoke.
 - In April 2012, the San Jose, CA city council passed a smoking ban that includes prohibition of smoking within 30 feet of doorways, windows, and air intakes of multi-dwelling units.

Additionally, we understand that the County has little enthusiasm for any tax increase or increased spending; however, these measures are effective in lowering the smoking rate and over time can result in significant health care savings. The cost of prevention is cheaper than the cost of treatment.

Thank you for your time and consideration.

Sincerely,



Marcos Pesquera
Chair, Montgomery County Commission on Health

CC:

Uma S. Ahluwalia, Director, Department of Health and Human Services
Ulder J. Tillman, MD, MPH, County Health Officer

Commission on Health



Montgomery County Commission on Health

Commission on Health
recommendations to lower the smoking
rate in Montgomery County

Presentation to Health and
Human Services Committee

October 18, 2012

Addressing the Problem

- Connection between smoking bans and decreased heart attack rates has been firmly established.
- Studies show that tobacco use by Montgomery County adults, although the lowest in the state, has remained stagnant since 2000.
- Healthy Montgomery reports 15.5% of people aged 12 or older smoke cigarettes, which could indicate an area of concern.
- Medical expenses cost the State of Maryland approximately \$7.40 per pack.

The Institutes of Medicine Committee on Secondhand Smoke Exposure and Acute Coronary Events

- A comprehensive review of the scientific literature on the connection between secondhand smoke and acute coronary events was released.
- The review identified eleven observational studies on the effects of smoking bans. These studies consistently show that after smoking bans are implemented, the rate of heart attacks decrease.
- Even though the smoking bans in the studies are implemented differently, a causal relationship between smoking bans and decreases in the rate of heart attacks can be concluded.

Summary of Commission's Recommendations

- Advocate for increased cigarette taxes at the state and federal level. The tax on cigarettes in New York City is \$6.46 per pack, and the smoking rate has declined from 22% in 2002 to 14% in 2011 and from 18% to 7% in teenagers.
- Limit youth access to cigarettes to prevent smoking initiation
 - The Montgomery County Public Schools should periodically review its anti-smoking programs, and provide the County School Board and County Council statistics measuring the effectiveness of its programs.
 - The County should review rules and regulations on placement of tobacco products in stores.
- Increase access to smoking cessation programs by increasing the budget for the DHHS Tobacco Use Prevention and Cessation programs.

Additional Recommendations

- Greater enforcement of current smoking laws. This may include changes to allow county police to assist DHHS and the Department of Liquor Control in the enforcement of smoking laws and tobacco placement regulations.
- County Council expansion of the smoking ban to **prohibit** smoking along store fronts and covered walkways such as at strip malls and shopping centers. Other locations ban smoking around location where smoking is prohibited including:
 - The State of Hawaii prohibits smoking with in a “Presumptive reasonable distance” of 20 feet distance from entrances, exits, windows, and air intake of location where smoking is prohibited.
 - The State of Arizona Rule R9-2-102 also prohibits smoking with 20 feet from a location where smoking is banned.
- Establishment of a new County **requirement** for businesses (including multi-dwelling units) to provide “smoking areas” away from the general public to limit exposure to secondhand smoke.
 - In April 2012, the San Jose, CA city council passed a smoking ban that includes prohibition of smoking within 30 feet of doorways, windows, and air intakes of multi-dwelling units.

References

- IOM (Institute of Medicine). 2010. *Second Hand Smoke Exposure and Cardiovascular Effects: Making Sense of the Evidence*. Washington DC: The National Academies Press.
- Maryland Department of Health and Mental Hygiene. Monitoring Changing Tobacco-use Behaviors in Maryland, November, 2007.
- <http://www.countyhealthrankings.org/app/maryland/2012/montgomery/county>
- <http://www.healthymontgomery.org/modules.php?op=download&name=NS-Indicator&file=indicator&iid=309>
- IOM (Institute of Medicine). 2007. *Ending the tobacco problem: A blueprint for the nation*. Washington, DC: The National Academies Press.

Overview

Federal Regulation of Tobacco: A Summary
July 2009



Background

On June 22, 2009, President Barack Obama signed into law the Family Smoking Prevention and Tobacco Control Act, giving the U.S. Food and Drug Administration (FDA) comprehensive authority to regulate the manufacturing, marketing, and sale of tobacco products. The new law represents the most sweeping action taken to date to reduce what remains the leading preventable cause of death in the United States.

Before enactment of the new law, tobacco products were largely exempt from regulation under the nation's federal health and safety laws, including the Food, Drug, and Cosmetic Act. The FDA has regulated food, drugs and cosmetics for many decades, but not tobacco products, except in those rare circumstances when manufacturers made explicit health claims.

What the New Law Does

The Family Smoking Prevention and Tobacco Control Act adds a new Chapter IX to the Food, Drug, and Cosmetic Act, establishing and governing the regulation of tobacco products. A new Center for Tobacco Products is created within the FDA to establish tobacco product standards, among other things. Chapter IX vests the FDA with jurisdiction to regulate both current and new tobacco products and restrict tobacco product marketing, while also directly implementing provisions that will, among other things, restrict tobacco product marketing and advertising, strengthen cigarette and smokeless tobacco warning labels, reduce federal preemption of certain state cigarette advertising restrictions, and increase nationwide efforts to block tobacco product sales to youth.

In addition to the FDA's new powers to regulate the structure of tobacco products, the agency has wide-ranging authority to regulate tobacco products and tobacco product marketing. The new law:

- Restricts tobacco advertising and promotion in order to promote overall public health (the judicial system will likely be asked to determine whether any of the legislated advertising restrictions unconstitutionally interferes with free speech under the First Amendment)
- Stops illegal sales of tobacco products to minors
- Bans all cigarettes that have a characterizing flavor, including all fruit and candy flavors, other than tobacco or menthol
- Prohibits health claims about purported reduced risk products, where such claims are not scientifically proven or would cause net public health harms (for example, by discouraging current tobacco users from quitting or encouraging new users to start)



Tobacco Control
Legal Consortium

Fact Sheet 1: Overview cont.



- Requires tobacco companies to disclose the contents of tobacco products, changes to their products, and research about the health effects of their products
- Requires much larger, more visible, and more informative health warning labels, including color and graphics, on cigarette and smokeless tobacco product packages
- Similarly requires much larger, more visible, and more informative health warning labels on advertisements for cigarettes and smokeless tobacco
- Prohibits terms such as “light,” “mild” and “low-tar” on tobacco product packages and advertisements, while authorizing the FDA to restrict additional terms in the future

The law also imposes certain limits on FDA authority. The agency cannot ban conventional tobacco products, such as cigarettes and smokeless tobacco, or require the total elimination of nicotine in tobacco products. However, the FDA may order the reduction of nicotine to non-addictive levels in some or all tobacco products. The agency also has the authority to order an increase in nicotine levels in tobacco products if it determines that doing so will promote overall public health. For their part, states retain the authority to ban all or some tobacco products or the sale of tobacco products containing nicotine.

The law also prohibits the FDA from using its new authority to increase the new federal minimum age of 18 to a higher level, require prescriptions for the purchase of tobacco products, ban tobacco product sales in any particular type of sales outlet, or regulate tobacco farming directly. In all of these areas, the FDA could ask Congress to either take these actions or provide the agency with new authority to do them. Moreover, states have the authority to take such actions without congressional approval.

The Family Smoking Prevention and Tobacco Control Act also mandates restrictions on the marketing and advertising of cigarettes and smokeless tobacco that the FDA itself adopted in 1996 but which the Supreme Court nullified in 2000 on the basis that Congress had not at that time given the FDA the authority to take such action. The new law:

- Bans outdoor advertising within 1,000 feet of schools and playgrounds
- Bans brand sponsorships of sports and entertainment events
- Bans free giveaways of any non-tobacco items with the purchase of tobacco products or in exchange for coupons or proof of purchase
- Bans free samples and the sale of cigarettes in packages that contain fewer than 20 cigarettes
- Limits any outdoor and all point-of-sale tobacco advertising, except in adult-only facilities, to black text on white background only
- Limits advertising in publications with significant teen readership to black text on white background only
- Limits audio-visual advertising, except in adult-only facilities, to black text on white background visuals and spoken words (no music, images or moving images)

- Restricts vending machines and self-service displays to adult-only facilities
- Establishes 18 as a federal nationwide minimum age for legal cigarette and smokeless tobacco sales with strong federal penalties, including the loss of the right to sell tobacco products for chronic, repeat offenders
- Requires retailers to verify age for all over-the-counter sales by checking a photographic ID, and provides for federal enforcement and penalties against retailers who sell to minors

The law also includes a number of other changes as well. For example, it:

- Limits the current federal preemption against state regulation of cigarette advertising under the Federal Cigarette Labeling and Advertising Act, by allowing states to restrict the location, color, size, number and placement of cigarette advertisements
- Grants the FDA exclusive authority in such areas as tobacco product standards, pre-market approval, adulteration, misbranding, labeling, registration, manufacturing standards and modified risk products, thereby preempting existing state authority in these areas—however, states continue to have authority to adopt fire-safe cigarette laws that regulate the ignition propensity of tobacco products
- Requires the tobacco companies to submit a listing of all tobacco ingredients and additives to tobacco, paper and filters by brand and by quantity in each brand, a description of the content, delivery and form of nicotine in each product, and all documents developed after enactment that relate to the health, toxicological, behavioral or physiological effects of current or future tobacco products
- Revises and strengthens the content of health warnings on both cigarette and smokeless tobacco products, requiring the warnings to cover 50 percent of the front and back of all packages, including graphic images depicting the harmful effects of tobacco use
- Blocks tobacco companies from claiming that the FDA has approved or certified any tobacco product

The law also provides substantial funding for the FDA's new responsibilities by imposing a user fee on tobacco companies. The prescribed funding mechanism is designed to ensure that the agency's tobacco prevention activities are fully funded without taking resources away from the FDA's other work. In 2010, the total fee will be \$235 million, rising to \$450 million in 2011 and increasing 6% a year until 2019, after which it will remain at \$712 million.

To learn more about FDA regulation of tobacco, visit www.tclconline.org.

The Tobacco Control Legal Consortium provides information and technical assistance on issues related to tobacco and public health, but does not provide legal representation or advice. This fact sheet should not be considered legal advice or a substitute for obtaining legal advice from an attorney who can represent you. If you have specific legal questions, we recommend that you consult with an attorney familiar with the laws of your jurisdiction.

The Maryland State Clean Indoor Air Act: A Guide for the Public



WHAT IS THE CLEAN INDOOR AIR ACT OF 2007?

The Clean Indoor Air Act of 2007 prohibits smoking in virtually all indoor workplaces in order to “preserve and improve the health, comfort, and environment of the people of Maryland by limiting exposure to environmental tobacco smoke.” The law provides for fair and consistent statewide protection from exposure to secondhand smoke in indoor settings. People in Maryland will now have clean, smoke-free air while working, dining, shopping, or relaxing throughout the state.

WHAT IS COVERED UNDER THE ACT?

As of *February 1, 2008*, there will be smoke-free air in almost all indoor places open to the public, including bars and restaurants. The Act prohibits smoking in the following facilities:

- Indoor areas open to the public
- Indoor meeting places open to the public
- Indoor places of employment
- Mass transit vehicles
- Private homes or residences being used by a licensed day care or child care provider
- Private vehicles used for the public transportation of children or as part of health care or day care transportation
- Clubs with alcohol licenses (under Article 2B, §1-102(a)(4), Annotated Code of Maryland)

WHAT IS REQUIRED OF BUSINESSES?

- All of the businesses listed above must prohibit smoking
- Signs stating that smoking is prohibited must be posted in the following facilities:
 - ✓ Retail stores
 - ✓ Theaters
 - ✓ Concert halls
 - ✓ Athletic facilities
 - ✓ Financial service institutions
 - ✓ Government buildings
 - ✓ Educational institutions
 - ✓ Museums
 - ✓ Libraries
 - ✓ Hotels and motels
 - ✓ Clubs as defined in Article 2B §1-102(a)(4), Annotated Code of Maryland

Signs must be conspicuously posted at each entrance and in prominent locations inside the establishment.

Some jurisdictions may have local ordinances with additional requirements. Check with your local health department or the Clean Indoor Air Act Help Line, 1-866-703-3266 for further information.

ARE THERE PUBLIC PLACES WHERE SMOKING IS STILL ALLOWED?

Smoking *may* still be permitted in tobacco shops, outdoor areas of bars and restaurants, and up to 25 percent of a hotel's or motel's guest rooms. In addition, the Act does not ban smoking outdoors. However, some jurisdictions may have stricter ordinances and some specific businesses may be exempt or have a temporary waiver from some requirements of the Act. Look for signs in each establishment for guidance.

WHY IS IT IMPORTANT TO ELIMINATE EXPOSURE TO SECONDHAND SMOKE?

Secondhand smoke comes from the burning end of a cigarette, cigar, or pipe – as well as the smoke exhaled by smokers. Former U.S. Surgeon General Richard Carmona reported that secondhand smoke contains more than 4,000 chemicals, including at least 69 that are cancer-causing. Up to 62,000 nonsmokers in the U.S. die each year from secondhand smoke-related causes. It is a serious health hazard that is a proven cause of disease including lung cancer, heart disease, bronchitis, pneumonia, asthma, and sudden infant death syndrome.

HOW DO I FILE A COMPLAINT IF I SEE SMOKING IN A BUSINESS?

Complaints can be made in person or over the phone to your local health department. If you have a question about how or where to make a complaint, call the Clean Indoor Air Act Help Line, **1-866-703-3266**, or visit the Clean Indoor Air Act Web site, www.mdcleanair.org.

HOW IS THE CLEAN INDOOR AIR ACT ENFORCED?

Business owners are required to comply with the law and local health departments will enforce it. Please obey posted signs identifying areas where smoking is not allowed. For further information or to file a complaint regarding a business you think may be in violation of the law, please notify your local health department, call the Clean Indoor Air Act Help Line at **1-866-703-3266**, or visit www.mdcleanair.org.

NOW IS A GREAT TIME TO QUIT!

When you're ready to quit, visit your local health department, call the *Maryland Tobacco Quitline* at **1-800-QUIT NOW**, or visit www.SmokingStopsHere.com. These are absolutely free services provided by the Maryland Department of Health and Mental Hygiene and local health departments that provide information on quitting and tools to help you quit for good.



air! Enjoy Maryland's new smoke-free atmosphere at your favorite bars and restaurants. To learn more about the Maryland Clean Indoor Air Act, visit www.mdcleanair.org or call 1-866-703-3266.

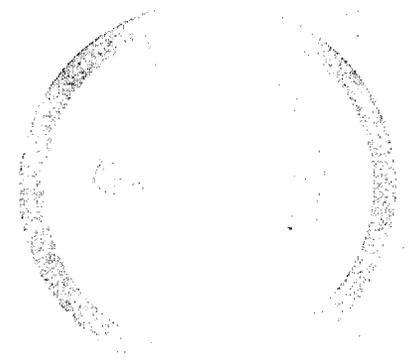
Evolution of Montgomery County smoking laws

- 1977 Prohibited smoking in elevators, retail stores where more than 8 persons work at any time, public areas of health care facilities, public schools, County government facilities, and theaters. Exceptions: private enclosed offices, when facilities are closed to the public, central areas of malls, barbershops, and beauty shops (Bill 26-76, effective 5-5-77)
- 1979 Required patient rooms in hospitals to be nonsmoking unless otherwise requested by all occupants. (Bill 53-79, effective 3-12-80)
- 1981 Required employers to “consider the needs of nonsmoking employees and ... accommodate their need to the extent possible.” (Bill 53-81, effective 11-15-82)
- 1986 Prohibited smoking in rail transit stations and most County government workplaces. Exceptions to the workplace prohibition: designated smoking areas, private enclosed offices. (Bill 27-85, effective 4-28-86)
- 1987 Required all restaurants with at least 50 seats to have a no-smoking area covering at least 50% of the total seating area (Bill 1-87, effective 7-10-87)
- 1988 Prohibited smoking in public areas of offices, retail stores, banks, factories, and other private businesses. Exceptions: mom & pop stores (where no more than 2 persons work at any time), private functions not open to the public. Also prohibited smoking in public restrooms and auditoriums. (Bill 27-87, effective 6-9-88)
- 1990 Prohibited smoking in shared workplaces, and required employers to post notices and inform employees. Exceptions: mom & pop businesses, other businesses when all employees sharing the workplace consent. (Bill 51-89, effective 5-24-90)
- 1992 Prohibited sale of tobacco products from vending machines, except in private clubs. (Bill 5-91, 64-91, effective 5-1-92) County law declared invalid by Circuit Court 4-19-93; Court of Appeals declared similar laws from cities of Bowie and Takoma Park preempted by state law later in 1993.
- 1994 Prohibited smoking in **all** County government workplaces, with no designated smoking areas. (Bill 42-93, effective 5-2-94)
- 1998 Prohibited a person in the business of selling or distributing tobacco products for commercial purposes to distribute any tobacco product,

cigarette rolling paper, or tobacco product coupons to a minor (Bill 13-98; also adopted as Board of Health regulation(Council Resolution 13-1410))

- 1999 Conformed County law to state workplace smoking regulations by dropping references to workplaces in County law, thus focusing County law on public places (Bill 3-99, effective 6-29-99)
- 1999 Prohibited smoking in all restaurants (Council Resolution 14-70, adopting Board of Health regulation). Regulation declared invalid because of improper adoption by Maryland Court of Appeals 5-2-03
- 2000 Required retail sellers to display or store tobacco products in a place that is not accessible to buyers without the intervention of the seller (Bill 23-00, effective February 19, 2001)
- 2003 Prohibited smoking in all restaurants except certain private clubs with liquor licenses (Bill 15-03, effective October 9, 2003)
- 2011 Prohibited smoking in indoor common areas of multi-family residential units and playgrounds (Council Resolution 17-210, adopting Board of Health regulation, effective August 12, 2011)

F:\LAW\TOPICS\Smoking\History Of Smoking Laws Updated.DOC



Tobacco Use & Prevention in Montgomery County

Presentation to HHS Committee
County Council

Dr. Ulder J. Tillman
Health Officer and Chief, Public Health Services,
Department of Health and Human Services

October 18, 2012

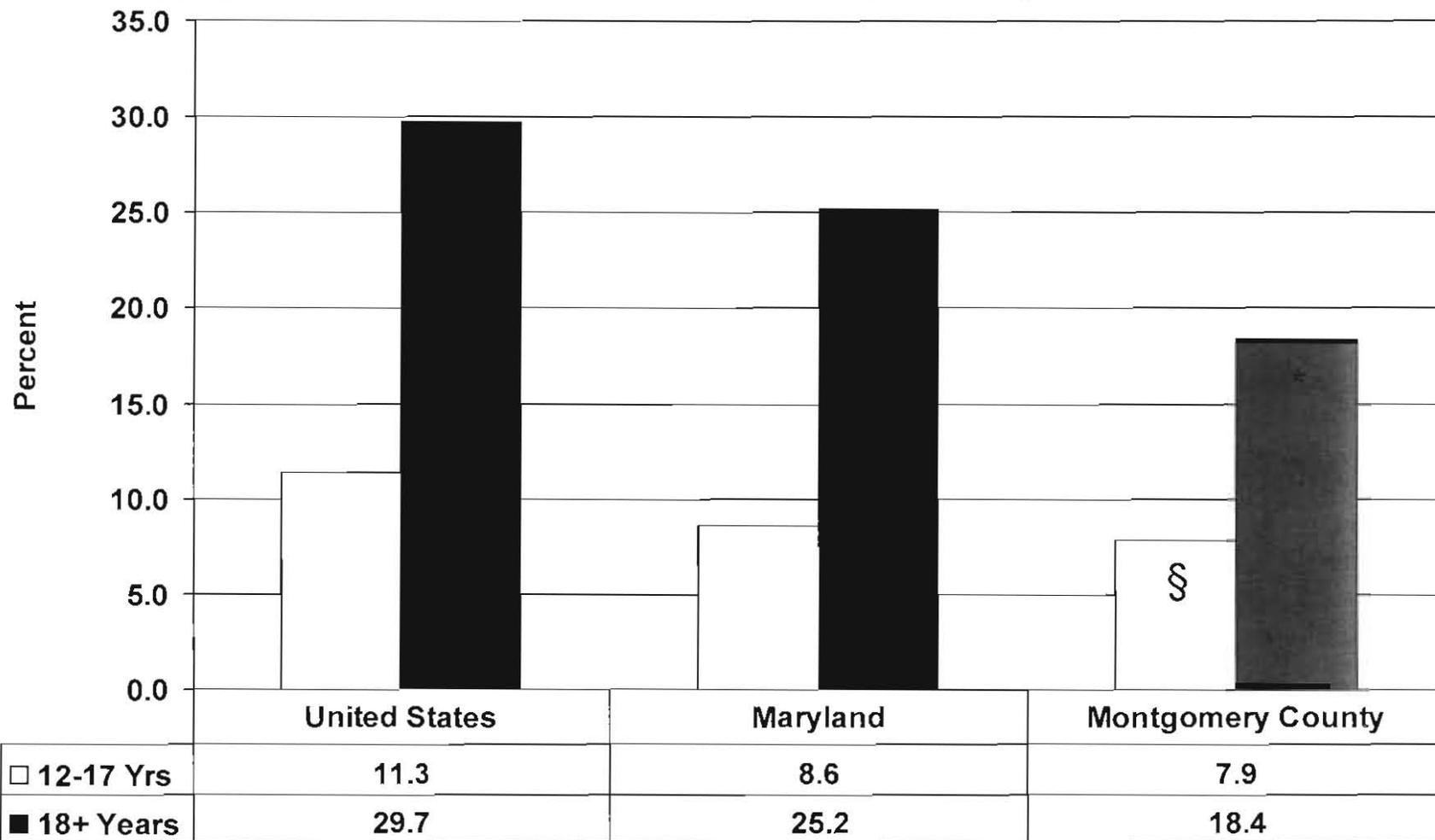


Tobacco Use and Prevention

- Prevalence of Tobacco Use Among Youth and Adults
- Tobacco Cessation and Prevention Efforts in Montgomery County
- Smoking Laws and Enforcement



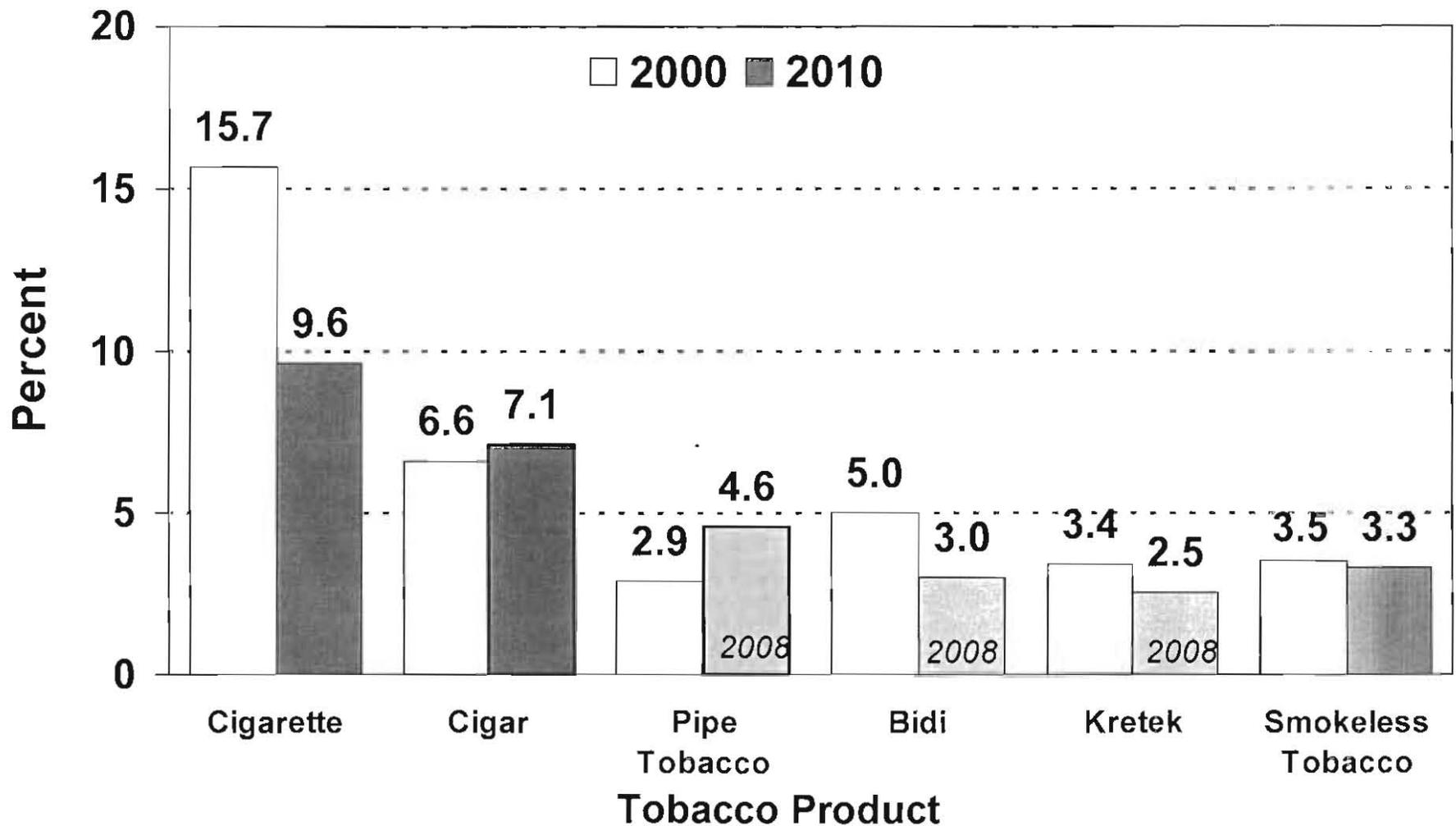
Use of Any Tobacco Product in Past Month for U.S., Maryland and Montgomery County Residents



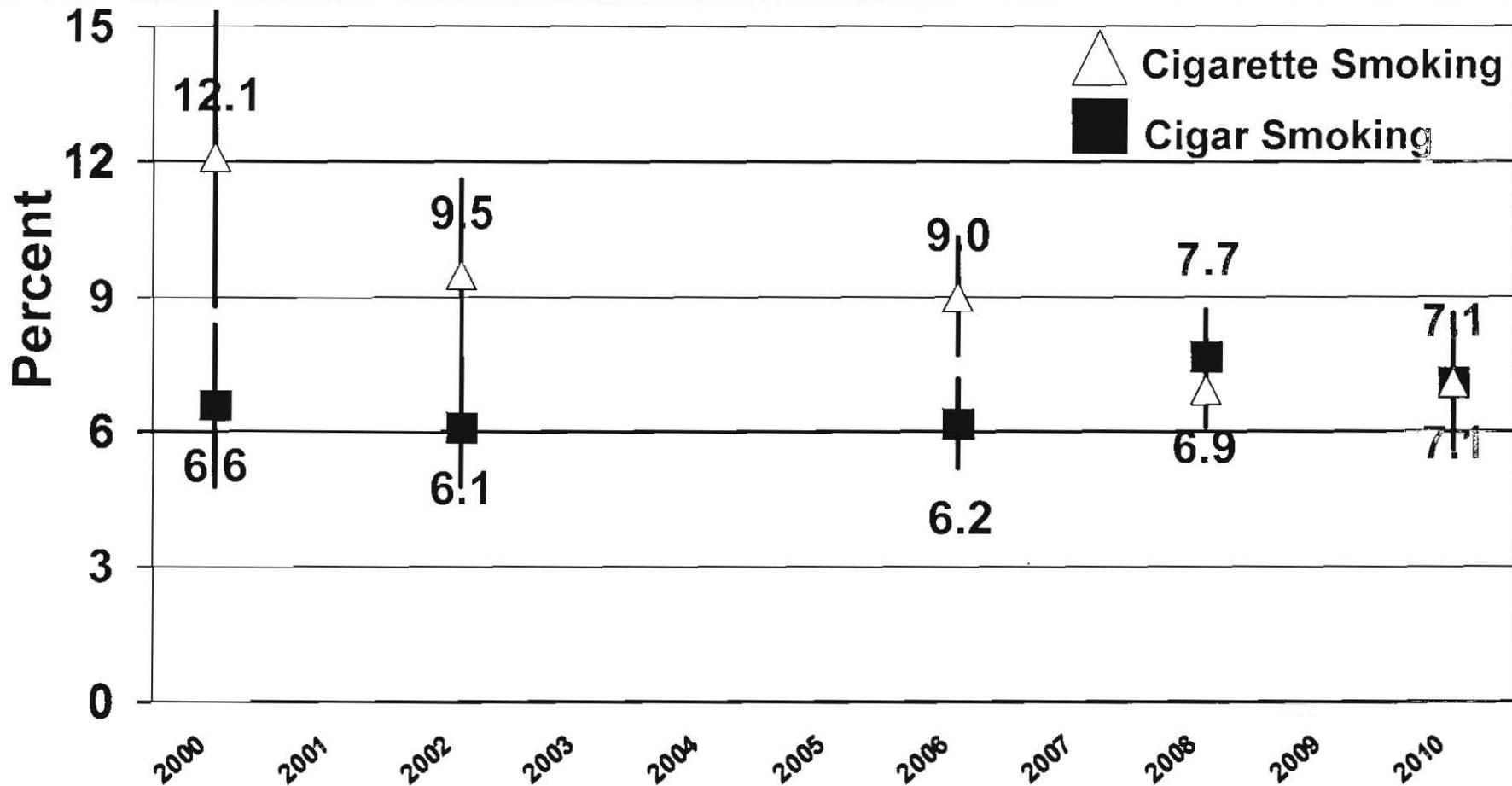
* Rate is statistically significantly LOWER than U.S. and Maryland;

§ Rate is statistically significantly LOWER than U.S. but not different from Maryland

Current Use of Tobacco Products by Montgomery County Youth Under 18 Years Has Declined Between 2000 and 2010 (EXCEPT Cigar & Pipe Use)

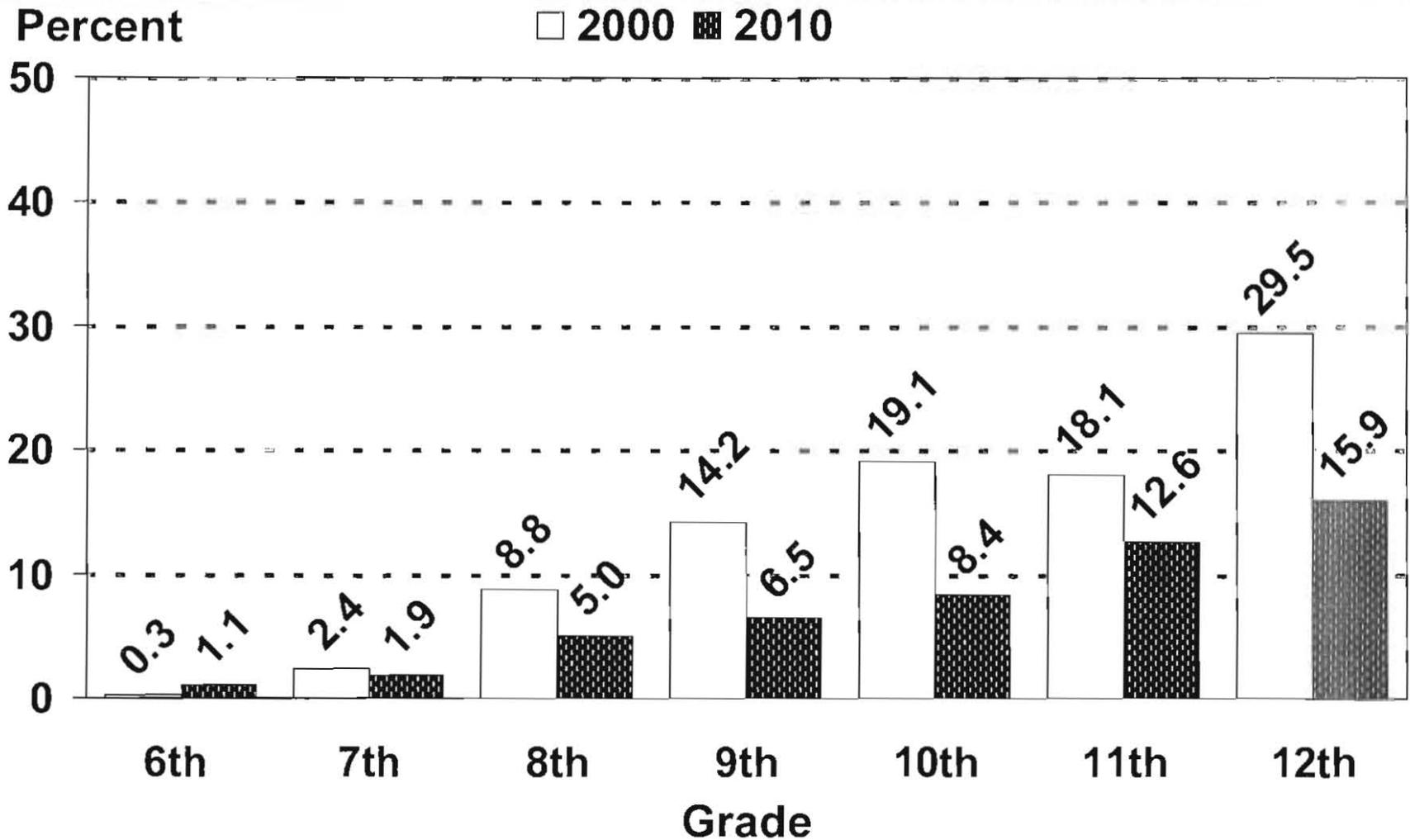


Cigarette Smoking Among Youth Decreased from 12.1% in 2000 to 7.1% in 2010

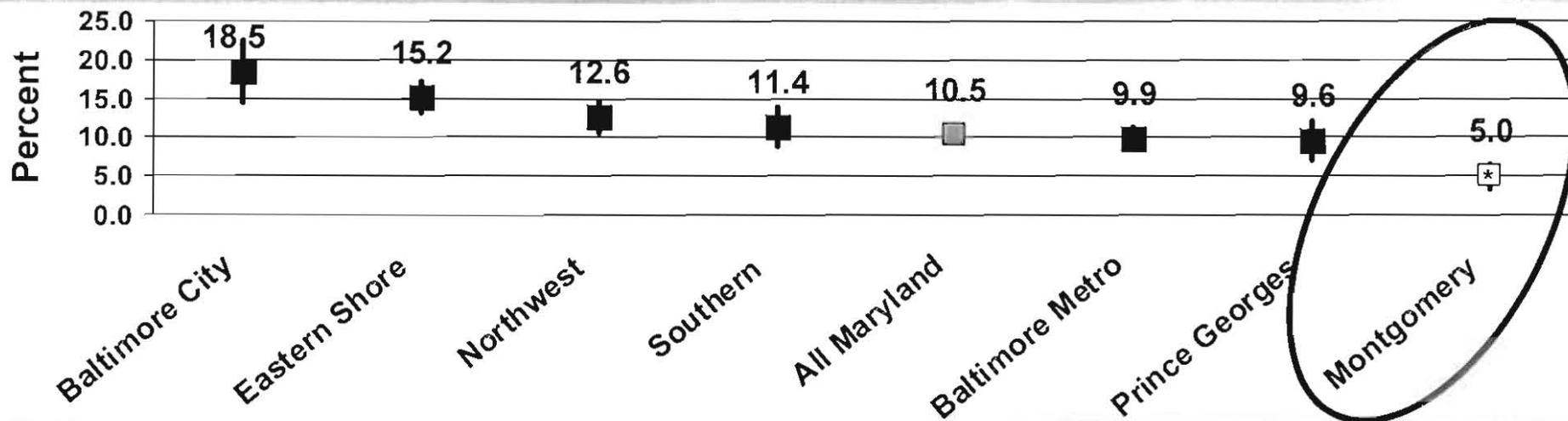


Cigar Smoking Among Youth Increased Slightly from 6.6% in 2001 to 7.1% in 2010

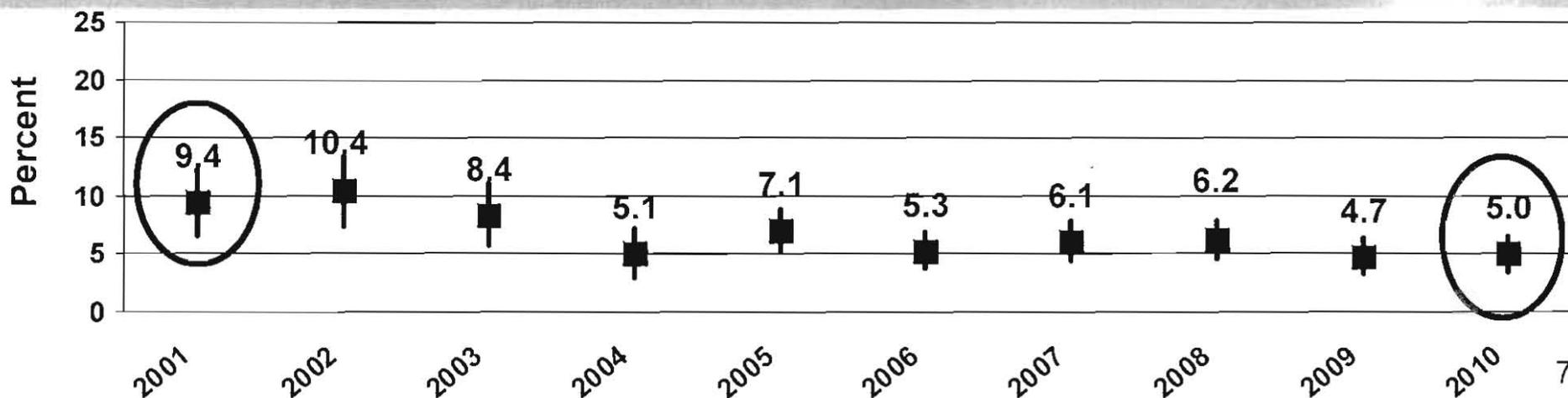
Current Smoking Among Youth Under 18 Years in Montgomery County Has Declined Between 2000 and 2010 in Almost Every Grade Level



Regionally, Montgomery County Had Lowest Percent of Adults Who Smoke in 2010



Percent of Montgomery County Adults Who Smoke Has Declined from 9.4% in 2001 to 5.0% in 2010



* Rate is statistically significantly LOWER than Other Maryland Regions & Maryland Overall rates.

DHHS Tobacco Prevention and Cessation Efforts

FY	Budget	People Served
2008	\$1,104,327 DHMH \$0 County \$1,104,327 Total	122,815 DHMH 0 County 122,815 Total
2009	\$1,050,899 DHMH \$0 County \$1,050,899 Total	92,094 DHMH 0 County 92,094 Total
2010	\$203,975 DHMH \$45,000 County \$248,975 Total	1,226 DHMH 818 County 2,044 Total
2011	\$203,975 DHMH \$41,858 County \$245,833 Total	1,010 DHMH 750 County 1,760 Total
2012	\$207,658 DHMH \$13,950 County \$221,608 Total	1,180 DHMH 330 County 1,510 Total

Tobacco Prevention and Cessation Programs

FY 08

(\$1,104,327-all DHMH)

- Community Education & Outreach (\$473,559)
- School-Based Education & Cessation (\$282,210)
- Enforcement & Merchant Education (\$72,011)
- Tobacco Cessation (\$276,547)

FY 12

(\$221,608 –DHMH and County)

- Community Education & Outreach (County-\$13,950)
- *School-Based Education & Cessation (\$0)*
- *Enforcement & Merchant Education (\$0)*
- Tobacco Cessation (DHMH - \$207,658)

Evolving Smoking Laws

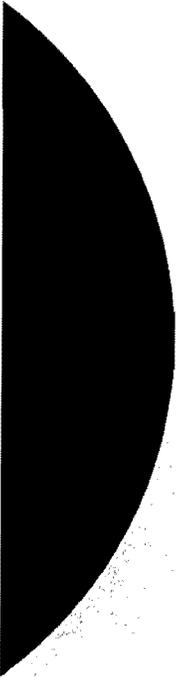
- 1976 **State of Maryland** prohibits use of tobacco during food preparation
(COMAR 10.15.03)
- 1994 **State of Maryland** prohibits smoking in an enclosed workplace
(COMAR 09.12.23)
- 2003 **Montgomery County** prohibits smoking in indoor areas such as elevators, retail stores, restaurants, county buildings, schools, etc.
(Chapter 24-9)
- 2007 **State of Maryland** adopts the Clean Indoor Air Act of 2007 prohibiting smoking in indoor areas open to the public, mass transit, residential day cares, clubs with alcohol licenses, etc.
- 2011 **Montgomery County** prohibits smoking in common indoor areas of multi-unit residential dwellings and within 25 feet of a playground serving residents of more than one dwelling unit. (Board of Health Resolution 17-210)

Enforcement of State and Local Laws Related to Smoking

<i>Type of Restriction</i>	<i>Authority</i>	<i>Method of Enforcement**</i>
All indoor areas open to the public, including workplace	State & County Law	Signage, complaint driven
Restaurants, including food prep areas	State & County Law	Signage, inspection and complaint-driven
Common indoor areas of multi-unit dwellings and playgrounds within 25 feet	County Law	Signage, complaint driven

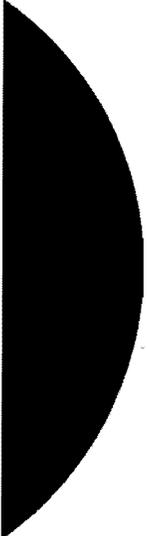
Smoking-related violations over the last 3 years were FY 10 (14); FY 11 (49); FY12 (37)– All were related to signage issues.

***Enforcement by local health department, except for workplace violations, which are handled by Maryland Occupational Safety and Health Administration (MOSHA)*



Tobacco Enforcement

Montgomery County Department of Liquor Control
Division of Licensure, Regulation and Education
www.montgomerycountymd.gov/dlc



Maryland State Law

- ✓ Prohibits tobacco retailers from selling any tobacco product to persons under the age of 18 years old.
- ✓ Prohibits self-serve tobacco products. Requires all tobacco products be placed behind the counter not accessible by reach.
- ✓ Requires a valid tobacco license posted on the premise.

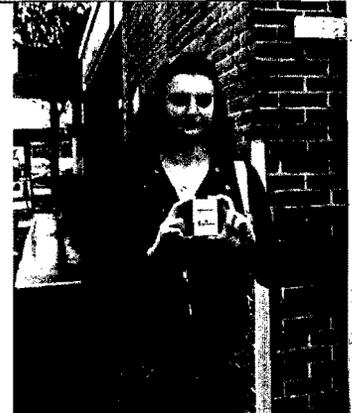
Tobacco Compliance Checks

Goals:

- To reduce tobacco sales to minors under the age of 18
- To ensure product placement laws are followed.

The Protocol:

- All UV's (underage volunteer under the age of 18) are checked to ensure the only belongings on their person at the time of an attempted purchase is their valid ID, a cell phone for safety and buy money
- Age enhancements such as facial hair, provocative clothing, and sun glasses are unacceptable.
- UV's attend an extensive training that includes detailed protocol as well as role playing.





Results at a Glance- FY12

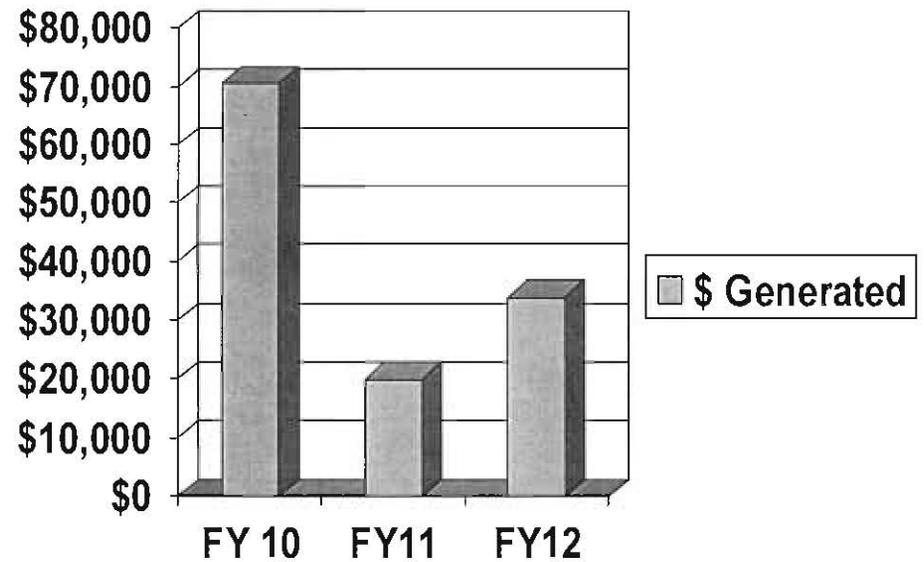
Fiscal Year 2012 Tobacco Compliance Check Results:

Compliance Checks for Underage Tobacco Sales	Number Checked	Number Sold	Compliance Rate
	300	63	79%

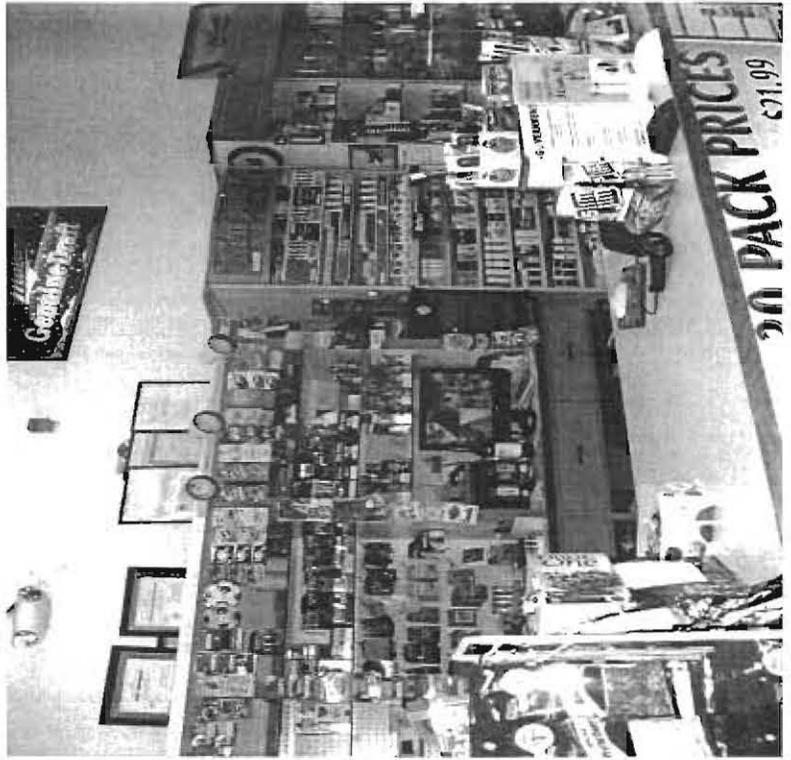
- In FY 2012, 300 inspections were conducted.
- 63 locations sold tobacco products to the UV
- 30 of those locations checks the UV's identification and still made the sale

Fines Collected- FY10-FY12

- FY10- 400 inspections
- FY11- 300 inspections
- FY12- 300 inspections



Tobacco Placement



Retailer Education

- Point of Sale Material
- Annual Calendar
- Tobacco Flyer



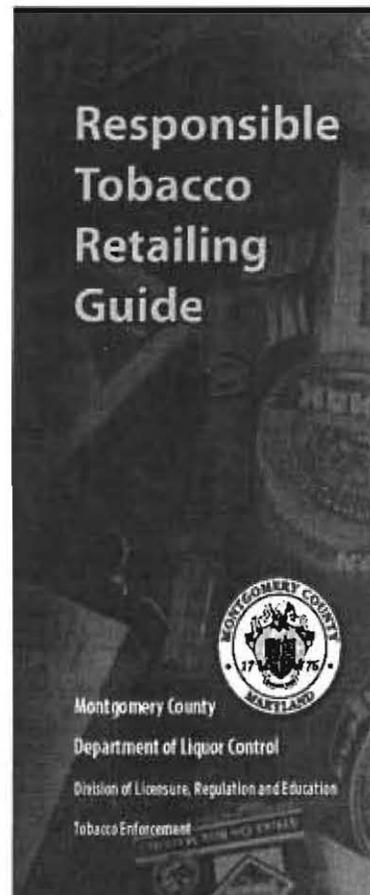
PDL Class **C** *Maryland*

Provisional Driver's License
 LIC #: B-100-200-300-400
Brittany Buyer
 Brittany Buyer
 16650 Crabbs Branch Way
 Rockville, MD 20855
 BIRTH DATE: 09-30-1996
 EXPIRES: 11-29-2016

Under 18 Until 09-30-2013
 Under 21 Until 09-30-2016

Sex F
 Height 5-02
 Weight 120
 Restr BJ
 Type PG
 Iss 04-18-2012

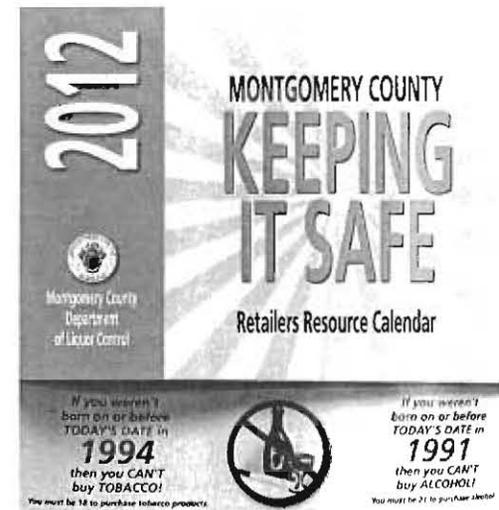
UNDER 21 ALCOHOL RESTRICTED 09-30-1996



Responsible Tobacco Retailing Guide

Montgomery County
 Department of Liquor Control

Division of Licensure, Regulation and Education
 Tobacco Enforcement



2012

MONTGOMERY COUNTY
KEEPING IT SAFE
 Retailers Resource Calendar

Montgomery County
 Department of Liquor Control

If you weren't born on or before TODAY'S DATE in **1994** then you CAN'T buy TOBACCO!
 You must be 18 to purchase tobacco products.

If you weren't born on or before TODAY'S DATE in **1991** then you CAN'T buy ALCOHOL!
 You must be 21 to purchase alcohol.

Please have your ID ready!

Montgomery County, Maryland
We Check ID's!

It's the LAW
 You must Be 18 to Purchase Tobacco Products
 & 21 to Purchase Alcohol

MONTGOMERY COUNTY DEHS, TOBACCO USE PREVENTION AND CESSATION PROGRAM IS
 MONTGOMERY COUNTY DEPARTMENT OF LIQUOR CONTROL
 BLC@MONTGOMERYCOUNTYMD.GOV