

March 27, 1995

The Honorable Thomas V. "Mike" Miller  
President of the Senate  
State House  
Annapolis, Maryland 21401

Dear Mr. President:

In accordance with Article II, Section 17 of the Maryland Constitution, I have today vetoed Senate Bill 860. This decision is based as much on the technical and legal problems associated with this bill as with its substance. With the passage of House Bill 1368 today, which was the culmination of a cooperative effort between this Administration and the General Assembly, the concerns with Senate Bill 860 outlined in this letter have been largely resolved.

Senate Bill 860 as amended restricts the authority of the Secretary of Licensing and Regulation and the Commissioner of Labor to adopt regulations restricting smoking in certain work places in the "hospitality" industry such as bars, restaurants, hotels and motels, and also certain other social venues such as clubs. The bill does authorize the Secretary to adopt some regulations restricting smoking with respect to other hospitality related work places, but the bill includes various narrow restrictions on the scope of those regulations. The bill is to be applied retroactively.

In response to approval by the Maryland Court of Appeals of regulations that restrict smoking in the work place, the General Assembly drafted and passed SB 860. Those work place regulations are authorized under statutes relating to worker safety and health, and do not contain exceptions for the hospitality industry. Given that such exemptions must be done statutorily, I expressed my desire to work with the General Assembly to make modest statutory exemptions to the regulations. The fruits of that cooperative effort with the General Assembly culminated in the passage of House Bill 1368, the companion bill to Senate Bill 860.

Senate Bill 860 contains several technical and legal deficiencies that could not only invalidate the entire regulation relating to work place smoking, but other regulations as well. The problem stems from language that retroactively applies the bill's restrictions "to affect the enforcement of any regulations, including COMAR 09.12.31.01 through .05 that have been adopted by the Secretary of Licensing and Regulation or the Commissioner of the Division of Labor and Industry that addresses the smoking or possession of tobacco in establishments affected by this Act."

This retroactive prohibition could be interpreted to require the entire work place smoking regulation to proceed anew through the adoption process. In fact, the Attorney General has opined that "There is surely a risk a court might interpret Section 2 to displace COMAR 09.12.23 in its entirety...[and that] a court might conclude that the regulations on a whole are invalidated by their embedded requirements for the hospitality industry."

Several legislators, including the sponsor of the House Bill, assured me this was not the intent, and the Attorney General has also opined that this is not the "best" interpretation of the bill. However, the mere risk that the bill could be interpreted to undermine the