

STRATEGY OUTLINE FOR MARYLAND

OCCUPATIONAL SAFETY AND HEALTH REGULATIONS

Background

Maryland Occupational Safety and Health (MOSH) proposed regulations require employers to ensure that in an enclosed workplace there is no smoking. The only exemptions are tobacconist establishments, a vehicle when used in the course of employment and occupied by only one person, and a analytical or educational laboratory which is conducting research on the health effects of tobacco. Smoking will be permitted if the employer provides a separate room with solid walls, a closable door, negative air pressure, separately exhausted to the outside, and not used as a work area.

Attached is an outline of the history of the proposed regulation. The General Assembly's AELR Committee will also review the regulation for compliance with the legal authority. There are three opportunities for impacting the proposal.

1. May 3 Public hearing on the proposal. Interested parties must request to appear by April 29th.
2. May 16 Public comment period ends. All written comments must be received by the Department.
3. AELR Joint Legislative Committee may hold public hearings or may write the Governor on their interpretation of the MOSH legal authority prior to publication as a final rule.

Any substantive change in the proposed regulation will require publication in the Maryland Register for another comment period and public hearing.

Strategy

Broad based opposition to the proposed regulation was demonstrated at the public hearings before the MOSH Advisory Board. The AFL-CIO, Maryland Chamber of Commerce, Retail Merchants Association, major employers, and many others expressed their opposition. However, two major groups were not as vocal as desired: the hospitality industry and individuals.

A coalition against the proposed regulation needs to be further developed to provide deep grassroots opposition and greater press potential. The focus of the coalition should be the May 3rd public hearing, and press impact prior to and after the hearing.

2024105654

In addition, the hearing record needs to be fully developed for potential legal challenges to the proposal. This will be coordinated with Covington & Burling on behalf of the industry. Additional testimony for the allies should be drafted for submission during the comment period.

On April 21, 1994, the industry will hold a meeting at the TI headquarters to finalize the plan for MOSH hearings. The strategy for approaching the AELR Committee, witnesses for the public hearing, press strategy, and public comments will be decided. The legislature adjourns on April 11th. The interim period will provide for an evaluation of the status of a coalition, members of AELR, and other factors.

Targets

The following groups need to be activated for a broad based coalition to amend the proposed regulations. As the coalition is developed, additional changes to the proposed regulations may be needed.

1. Bars and restaurants are beginning to become active on the proposal. They need additional support to broaden their activity to other members of the hospitality industry. 75% of Maryland's population lives within 30 minutes of another state. In addition, conventions and tourism are two of the state's biggest industries. The economic impact on these industries because of interstate competition will be devastating.

Provisions for smoking in hotel rooms, private facilities, meetings and convention facilities, bars, and restaurants need to be included in any final regulation. However, this change will require another public hearing and comment period.

2. Individuals who have an office, employ a care giver, contract with a plumber or caterer, or use their home to perform work within the definition of workplace will be prohibited from smoking in their own home. There has been no attention given to this expansion of authority by MOSH. Opposition must be generated to exclude private residences.
3. Employers from a broad cross section of industries need to comment on the undue burden the proposal will place on them. It will not be illegal to smoke in Maryland, but an employer is subject to a \$7,000 fine for allowing smoking to occur in the workplace. This is a subject for the General Assembly.

There are additional groups and businesses which need to be included, but the above three areas are the most likely to become active with an initial contact. The groups and individuals who opposed the regulations at the public hearings last December will be contacted again to oppose the regulation.

2024105655

Recommend Resources

TI recommends the following resources be developed for the MOSH proposed rule making:

1. Grassroots Coalition Major organizations have opposed the regulations, but additional depth must be given from individual businesses, hospitality groups, individuals who work in their home, and allies associated with the tobacco industry.

APCO, in conjunction with the company resources, has proposed a plan for implementing a coalition.
2. Proactive Press Opposition to the proposal must be actively promoted to the press. This may include paid advertisements. A spokesperson(s) for the coalition needs to be identified and trained. This person(s) must promote the opposition as broad based. A local public relations firm should be considered to implement a press strategy.
3. Economic Data Studies on the economic impact of the proposed regulation should be explored. This will be helpful in the recruitment of allies, press relations, and testimony and comments. Ideally, a Maryland professor releases a study on the economic impact on businesses in the state prior to and/or at the public hearing.

These resources will be activated through coordination with TI, the companies, the local legislative counsel, and APCO.

Budget

Attached for your review is a proposed budget from Neal Cohen of APCO. This does not include any legal costs which may be incurred for potential litigation.

2024105656

MARYLAND OCCUPATIONAL SAFETY AND HEALTH REGULATIONS

OUTLINE OF THE HISTORY

November 3, 1993 Secretary of Licensing and Regulation requests the MOSH Advisory Board to consider regulations to restrict smoking.

November 8, 1993 Notice of the Public hearings in the Baltimore Sun

December 9, 1993 Public hearing in Crownsville, MD by the Advisory Board

December 16, 1993 Public Hearing in Frederick, MD by the Advisory Board

January 12, 1994 MOSH Advisory Board considers the testimony, comments, and evidence submitted on the proposals.

February 2, 1994 MOSH Advisory Board continues consideration of the proposals

March 2, 1994 MOSH Advisory Board votes to recommend a regulation to the Secretary to require employers to ban smoking in the workplace, but exempt hotel rooms; meeting, conference, and convention facilities; bars and restaurants.

March 9, 1994 Publication in the Maryland Register of a proposed regulation which requires employers to ban smoking in the workplace which includes hotel rooms, bars, restaurants, and meeting facilities.

April 29, 1994 Requests to appear at the public hearing must be received

May 3, 1994 Public hearing on the proposed regulations

May 16, 1994 Close of the comment period on the proposal

2024105657