HOUSE BILL 278

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By: **Delegates Frush, Morhaim, Beidle, Burns, Gaines, Healey, Hixson, Holmes, Howard, Hubbard, Ivey, Jones, Kach, Nathan–Pulliam, Pena–Melnyk, B. Robinson, S. Robinson, Rosenberg, Stocksdale, Swain, V. Turner, and Valentino–Smith**

Introduced and read first time: January 20, 2014
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Criminal Law – Tobacco Products – Minimum Age

FOR the purpose of altering the age requirements for certain provisions of law relating to tobacco products; prohibiting a person from selling or dispensing tobacco products through a vending machine unless the machine is located in an establishment that an individual under a certain age is prohibited by law from entering; prohibiting the distribution of a tobacco product or tobacco paraphernalia to an individual under a certain age except under certain circumstances; prohibiting an individual under a certain age from using or possessing a tobacco product or cigarette rolling paper or from obtaining or attempting to obtain a tobacco product or cigarette rolling paper using false identification; altering a certain provision relating to budget appropriations by the Governor aimed at reducing tobacco use; altering a certain purpose of the Cigarette Restitution Fund; making conforming changes; and generally relating to the minimum age for the purchase of tobacco products.

BY repealing and reenacting, with amendments,
Article – Business Regulation
Section 16–3A–02
Annotated Code of Maryland
(2010 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 10–107 and 10–108
Annotated Code of Maryland
(2012 Replacement Volume and 2013 Supplement)

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 13–1015
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Local Government
Section 1–1203
Annotated Code of Maryland
(2013 Volume)

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 7–317
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Business Regulation

16–3A–02.

A person may not sell or dispense or offer to sell or dispense a tobacco product through a vending machine in the State, unless the vending machine:

(1) is located in an establishment that **[**minors**]** **INDIVIDUALS UNDER THE AGE OF 21 YEARS** are prohibited by law from entering or an establishment that is a bona fide fraternal or veterans organization; or

(2) can only be operated with a token, card, or similar device that an individual can only obtain or purchase from the owner or an employee or agent of the owner.

Article – Criminal Law

10–107.

(a) This section does not apply to the distribution of a coupon that is redeemable for a tobacco product, if the coupon is:

(1) contained in a newspaper, magazine, or other type of publication in which the coupon is incidental to the primary purpose of the publication; or

(2) sent through the mail.

(b) (1) This subsection does not apply to the distribution of a tobacco product or tobacco paraphernalia to **[**a minor**] AN INDIVIDUAL UNDER THE AGE OF 21 YEARS** who is acting solely as the agent of the **[**minor's**] INDIVIDUAL'S** employer if the employer distributes tobacco products or tobacco paraphernalia for commercial purposes.

(2) A person who distributes tobacco products for commercial purposes, including a person licensed under Title 16 of the Business Regulation Article, may not distribute to **[**a minor**] AN INDIVIDUAL UNDER THE AGE OF 21 YEARS**:

(i) a tobacco product;

(ii) tobacco paraphernalia; or

(iii) a coupon redeemable for a tobacco product.

(c) A person not described in subsection (b)(2) of this section may not:

(1) purchase for or sell a tobacco product to **[**a minor**] AN INDIVIDUAL UNDER THE AGE OF 21 YEARS**; or

(2) distribute tobacco paraphernalia to **[**a minor**] AN INDIVIDUAL UNDER THE AGE OF 21 YEARS**.

(d) In a prosecution for a violation of this section, it is a defense that the defendant examined the purchaser's or recipient's driver's license or other valid identification issued by an employer, government unit, or institution of higher education that positively identified the purchaser or recipient as at least **[**18**] 21** years of age.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding:

(1) $300 for a first violation;

(2) $1,000 for a second violation occurring within 2 years after the first violation; and

(3) $3,000 for each subsequent violation occurring within 2 years after the preceding violation.

(f) For purposes of this section, each separate incident at a different time and occasion is a violation.

10–108.

(a) In this section, "violation" has the meaning stated in § 3–8A–01 of the Courts Article.

(b) This section does not apply to the possession of a tobacco product or cigarette rolling paper by **[**a minor**] AN INDIVIDUAL UNDER THE AGE OF 21 YEARS** who is acting as the agent of the **[**minor's**] INDIVIDUAL'S** employer within the scope of employment.

(c) **[**A minor**] AN INDIVIDUAL UNDER THE AGE OF 21 YEARS** may not:

(1) use or possess a tobacco product or cigarette rolling paper; or

(2) obtain or attempt to obtain a tobacco product or cigarette rolling paper by using a form of identification that:

(i) is falsified; or

(ii) identifies an individual other than the **[**minor**] INDIVIDUAL USING THE IDENTIFICATION**.

(d) (1) A violation of this section is a civil offense.

(2) **[**A minor**] AN INDIVIDUAL** who violates this section is subject to the procedures and dispositions provided in Title 3, Subtitle 8A of the Courts Article.

(e) A law enforcement officer authorized to make arrests shall issue a citation to **[**a minor**] AN INDIVIDUAL** if the law enforcement officer has probable cause to believe that the **[**minor**] INDIVIDUAL** is committing or has committed a violation of this section.

Article – Health – General

13–1015.

(a) For fiscal year 2011 and fiscal year 2012, the Governor shall include at least $6,000,000 in the annual budget in appropriations for activities aimed at reducing tobacco use in Maryland as recommended by the Centers for Disease Control and Prevention, including:

(1) Media campaigns aimed at reducing smoking initiation and encouraging smokers to quit smoking;

(2) Media campaigns educating the public about the dangers of secondhand smoke exposure;

(3) Enforcement of existing laws banning the sale or distribution of tobacco products to [minors] **INDIVIDUALS UNDER THE AGE OF 21 YEARS**;

(4) Promotion and implementation of smoking cessation programs; and

(5) Implementation of school–based tobacco education programs.

(b) For fiscal year 2013 and each fiscal year thereafter, the Governor shall include at least $10,000,000 in the annual budget in appropriations for the purposes described in subsection (a) of this section.

Article – Local Government

1–1203.

(a) This section applies only in:

(1) Carroll County;

(2) Cecil County;

(3) Garrett County; and

(4) St. Mary's County.

(b) Subsection (c)(3) of this section does not apply to the distribution of a coupon that is redeemable for a tobacco product if the coupon:

(1) is contained in a newspaper, magazine, or other type of publication and the coupon is incidental to the primary purpose of the publication; or

(2) is sent through the mail.

(c) A person may not:

(1) distribute a tobacco product to [a minor] **AN INDIVIDUAL UNDER THE AGE OF 21 YEARS**, unless the [minor] **INDIVIDUAL** is acting solely as the agent of the [minor's] **INDIVIDUAL'S** employer who is engaged in the business of distributing tobacco products;

(2) distribute cigarette rolling papers to [a minor] **AN INDIVIDUAL UNDER THE AGE OF 21 YEARS**; or

(3) distribute to **[**a minor**]** **AN INDIVIDUAL UNDER THE AGE OF 21 YEARS** a coupon redeemable for a tobacco product.

(d) A person has not violated this section if:

(1) the person examined the driver's license or other valid government–issued identification presented by the recipient of a tobacco product, cigarette rolling paper, or coupon redeemable for a tobacco product; and

(2) the license or other identification positively identified the recipient as being at least **[**18**]** **21** years old.

(e) (1) In Carroll County and St. Mary's County, a person who violates this section commits a civil infraction and is subject to a civil penalty of:

(i) $300 for the first violation; and

(ii) $500 for any subsequent violation within 24 months after the previous citation.

(2) In Cecil County, a person who violates this section commits a civil infraction and is subject to a civil penalty of:

(i) $300 for the first violation;

(ii) $500 for a second violation; and

(iii) $750 for any subsequent violation.

(3) In Garrett County, a person who violates this section commits a civil infraction and is subject to a civil penalty not exceeding $300.

Article – State Finance and Procurement

7–317.

(a) There is a Cigarette Restitution Fund.

(b) (1) The Fund is a continuing, nonlapsing fund that is not subject to § 7–302 of this subtitle.

(2) There shall be credited to the Fund all revenues consisting of funds received by the State from any source resulting, directly or indirectly, from any judgment against or settlement with tobacco product manufacturers, tobacco research associations, or any other person in the tobacco industry relating to litigation, administrative proceedings, or any other claims made or prosecuted by the State to recover damages for violations of State law.

(3) There shall be credited to the Fund all moneys collected under § 24–508 of the Health – General Article or § 5–608 of the Labor and Employment Article.

(c) The Treasurer shall:

(1) invest and reinvest the Fund in the same manner as other State funds; and

(2) credit any investment earnings to the Fund.

(d) Expenditures from the Fund shall be made by an appropriation in the annual State budget.

(e) (1) The Fund shall be expended subject to any restrictions on its use or other limitations on its allocation that are:

(i) expressly provided by statute;

(ii) required as a condition of the acceptance of funds; or

(iii) determined to be necessary to avoid recoupment by the federal government of money paid to the Fund.

(2) Disbursements from the Fund to programs funded by the State or with federal funds administered by the State shall be used solely to supplement, and not to supplant, funds otherwise available for the programs under federal or State law as provided in this section.

(f) (1) The Cigarette Restitution Fund shall be used to fund:

(i) the Tobacco Use Prevention and Cessation Program established under Title 13, Subtitle 10 of the Health – General Article;

(ii) the Cancer Prevention, Education, Screening, and Treatment Program established under Title 13, Subtitle 11 of the Health – General Article; and

(iii) other programs that serve the following purposes:

1. reduction of the use of tobacco products by **[**minors**]** **INDIVIDUALS UNDER THE AGE OF 21 YEARS**;

2. implementation of the Southern Maryland Regional Strategy–Action Plan for Agriculture adopted by the Tri–County Council for Southern

Maryland with an emphasis on alternative crop uses for agricultural land now used for growing tobacco;

3. public and school education campaigns to decrease tobacco use with initial emphasis on areas targeted by tobacco manufacturers in marketing and promoting cigarette and tobacco products;

4. smoking cessation programs;

5. enforcement of the laws regarding tobacco sales;

6. the purposes of the Maryland Health Care Foundation under Title 20, Subtitle 5 of the Health – General Article;

7. primary health care in rural areas of the State and areas targeted by tobacco manufacturers in marketing and promoting cigarette and tobacco products;

8. prevention, treatment, and research concerning cancer, heart disease, lung disease, tobacco product use, and tobacco control, including operating costs and related capital projects;

9. substance abuse treatment and prevention programs; and

10. any other public purpose.

(2) The provisions of this subsection may not be construed to affect the Governor's powers with respect to a request for an appropriation in the annual budget bill.

(g) (1) Amounts may only be expended from the Fund through appropriations in the State budget bill as provided in this subsection.

(2) The Governor shall include in the annual budget bill appropriations from the Fund equivalent to the lesser of $100,000,000 or 90% of the funds estimated to be available to the Fund in the fiscal year for which the appropriations are made.

(3) For each fiscal year for which appropriations are made, at least 50% of the appropriations shall be made for those purposes enumerated in subsection (f)(1)(i), (ii), and (iii)1 through 9 of this section subject to the requirement of subsection (e)(2) of this section.

(4) For each fiscal year for which appropriations are made, at least 30% of the appropriations shall be made for the purposes of the Maryland Medical Assistance Program.

(5) For each fiscal year for which appropriations are made, 0.15% of the Fund shall be appropriated for the purposes of enforcement of Title 16, Subtitle 5 of the Business Regulation Article.

(6) Any additional appropriations, not subject to paragraph (3), paragraph (4), or paragraph (5) of this subsection, may be made for any lawful purpose.

(h) For each program, project or activity receiving funds appropriated under subsection (g)(3) of this section, the Governor shall:

(1) develop appropriate statements of vision, mission, key goals, key objectives, and key performance indicators and report these statements in a discrete part of the State budget submission, which shall also provide data for key performance indicators; and

(2) report annually, subject to § 2–1246 of the State Government Article, to the General Assembly no later than October 1 on:

(i) total funds expended, by program and subdivision, in the prior fiscal year from the Fund established under this section; and

(ii) the specific outcomes or public benefits resulting from that expenditure.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.