
By: Delegates Morhaim, Frush, and Hubbard

Introduced and read first time: January 25, 1996

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 Tobacco Products - Sales to Minors by Vending Machines and Penalties

3 FOR the purpose of altering certain penalties for persons found violating a certain
4 provision of law related to distributing tobacco products and cigarette papers to
5 minors; repealing a certain exemption from penalties for sales of tobacco products
6 to minors for owners of and other persons exercising control over tobacco product
7 vending machines; establishing penalties for certain proprietors and owners of
8 vending machines for the sale of tobacco products to minors by vending machines;
9 establishing a certain penalty for a minor who obtains a tobacco product by means
10 of a vending machine; and generally relating to the sale of tobacco products to
11 minors by vending machines.

12 BY repealing and reenacting, without amendments,
13 Article 27 - Crimes and Punishments
14 Section 404
15 Annotated Code of Maryland
16 (1992 Replacement Volume and 1995 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article 27 - Crimes and Punishments
19 Section 405 and 405A
20 Annotated Code of Maryland
21 (1992 Replacement Volume and 1995 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article - Courts and Judicial Proceedings
24 Section 3-810(o) and 3-820(d)(3)
25 Annotated Code of Maryland
26 (1995 Replacement Volume and 1995 Supplement)

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

2

1 **Article 27 - Crimes and Punishments**

2 404.

3 (a) (1) In this subheading the following words have the meanings indicated.

4 (2) "Tobacco product" means any substance containing tobacco, including
5 cigarettes, cigars, smoking tobacco, snuff, or smokeless tobacco.

6 (3) "Distribute" means to:

7 (i) Give away, sell, deliver, dispense, or issue;

8 (ii) Offer to give away, sell, deliver, dispense, or issue; or

9 (iii) Cause or hire any person to give away, sell, deliver, dispense, or
10 issue or offer to give away, sell, deliver, dispense, or issue.

11 (b) (1) A person engaged in the business of selling or otherwise distributing
12 tobacco products for commercial purposes, including persons licensed under Title 16 of
13 the Business Regulation Article, may not:

14 (i) Distribute any tobacco product to a minor, unless the minor is
15 acting solely as the agent of the minor's employer, who is in the business of distributing
16 tobacco products;

17 (ii) Distribute cigarette rolling papers to a minor; or

18 (iii) Distribute to any minor a coupon redeemable for any tobacco
19 product.

20 (2) A person not described under paragraph (1) of this subsection may not:

21 (i) Purchase for or sell to a minor any tobacco product; or

22 (ii) Deliver or sell to a minor cigarette rolling papers.

23 (c) The provisions of subsection (b) of this section do not apply to the distribution
24 of a coupon which is redeemable for any tobacco product when the coupon is contained
25 in a newspaper, a magazine, or any other type of publication in which the coupon is
26 incidental to the primary purpose of the publication, or sent through the mail.

27 (d) In a prosecution for a violation of subsection (b)(1) or (2) of this section, it
28 shall be a defense that the defendant examined the purchaser's or recipient's driver's
29 license or other valid identification issued by an employer, a governmental entity, or
30 institution of higher education that positively identified the purchaser or recipient as at
31 least 18 years old.

32 405.

33 (a) [Except as provided in subsection (b) of this section, a] A person who violates
34 § 404(b) of this subheading shall be subject to:

35 (1) For a first violation, a [fine] CIVIL PENALTY of not more than \$300;

3

1 (2) For a second violation occurring within a 2-year period of the first
2 violation, a [fine] CIVIL PENALTY of not more than \$1,000; and

3 (3) For a third or subsequent violation occurring within a 2-year period of
4 the prior violation, a [fine] CIVIL PENALTY of not more than \$3,000.

5 (b) [If the requirements of § 16-209(b)(2)(ii) of the Business Regulation Article
6 are satisfied, the provisions of subsection (a) of this section do not apply to the owner of
7 a tobacco product vending machine or any other person exercising control over a tobacco
8 product vending machine if a person under 18 has purchased a tobacco product from a
9 vending machine.] FOR A VIOLATION OF § 404(B) OF THIS SUBHEADING RELATED TO
10 THE DISTRIBUTION OF A TOBACCO PRODUCT TO A MINOR BY MEANS OF A VENDING
11 MACHINE, THE CIVIL PENALTIES ESTABLISHED UNDER SUBSECTION (A) OF THIS
12 SECTION SHALL APPLY ONLY TO THE PROPRIETOR OF THE ESTABLISHMENT IN
13 WHICH THE VENDING MACHINE IS LOCATED AND THE OWNER OF THE VENDING
14 MACHINE.

15 (C) A LAW ENFORCEMENT OFFICER AUTHORIZED TO MAKE ARRESTS SHALL
16 ISSUE A CIVIL CITATION TO A PERSON IF THE OFFICER HAS PROBABLE CAUSE TO
17 BELIEVE THAT THE PERSON IS COMMITTING OR HAS COMMITTED A VIOLATION OF §
18 404 OF THIS SUBHEADING.

19 [(c)] (D) For purposes of this section, a violation means a separate and distinct
20 incident at a different time and occasion.

21 405A.

22 (a) A minor may not:

23 (1) Use or, unless acting as the agent of the minor's employer within the
24 scope of employment, possess any tobacco product or cigarette rolling papers;

25 (2) OBTAIN OR ATTEMPT TO OBTAIN A TOBACCO PRODUCT BY MEANS
26 OF A VENDING MACHINE; or

27 [(2)] (3) Use any falsified identification, or use any identification other than
28 his or her own, for the purpose of obtaining or attempting to obtain tobacco products or
29 cigarette rolling papers.

30 (b) For purposes of this section, a violation of the provisions of this section is
31 deemed a Code violation and is a civil offense.

32 (c) An individual who violates the provisions of this section shall be subject to the
33 procedures and dispositions provided in Title 3, Subtitle 8 of the Courts and Judicial
34 Proceedings Article.

35 (d) A law enforcement officer authorized to make arrests shall issue a citation to
36 a person if the officer has probable cause to believe that the child is committing or has
37 committed a Code violation.

4

1 **Article - Courts and Judicial Proceedings**

2 3-810.

3 (o) The intake officer shall forward the citation authorized under Article 27, §
4 405A of the Code to the State's Attorney if [the]:

5 (1) THE child fails to comply with a smoking program referral or a
6 supervised work program assignment described under subsection (n) of this section; OR

7 (2) THE CITATION WAS ISSUED TO A CHILD FOR OBTAINING OR
8 ATTEMPTING TO OBTAIN A TOBACCO PRODUCT BY MEANS OF A VENDING MACHINE.

9 3-820.

10 (d) (3) (i) The provisions of paragraphs (1) and (2) of this subsection do not
11 apply to a child found to have committed a violation under Article 27, § 405A of the
12 Code.

13 (ii) [In] EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS
14 PARAGRAPH, IN making a disposition on a finding that the child has committed a
15 violation under Article 27, § 405A of the Code, the court may:

16 1. Counsel the child or the parent or both, or order the child to
17 participate in a smoking cessation clinic, or other suitable presentation of the hazards
18 associated with tobacco use that is in the best interest of the child;

19 2. Impose a civil fine of not more than \$25 for the first violation
20 and a civil fine of not more than \$100 for a second or subsequent violation; or

21 3. Order the child to participate in a supervised work program
22 for not more than 20 hours for the first violation and not more than 40hours for a second
23 or subsequent violation.

24 (III) IN MAKING A DISPOSITION ON A FINDING THAT THE CHILD
25 HAS COMMITTED A VIOLATION UNDER ARTICLE 27, § 405A OF THE CODE FOR
26 OBTAINING OR ATTEMPTING TO OBTAIN A TOBACCO PRODUCT BY MEANS OF A
27 VENDING MACHINE, THE COURT SHALL IMPOSE A CIVIL FINE OF \$50.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 1996.