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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 - Penalties**

3 FOR the purpose of adding certain penalties for violations of certain provisions of law;
4 providing for the application of certain penalties; requiring certain court clerks to
5 notify the Comptroller of certain violations; requiring the Comptroller to take
6 certain actions after receiving certain notifications; requiring the display of signs
7 concerning sales to minors; authorizing minors to purchase or attempt to purchase
8 tobacco products under certain circumstances; making certain technical corrections;
9 providing that this Act does not prohibit any county or municipal corporation from
10 enacting a certain ordinance, resolution, law, or rule that is more stringent than
11 certain provisions of this Act; making provisions of this Act severable; and generally
12 relating to minors' access to tobacco products.

13 BY repealing and reenacting, with amendments,
14 Article 27 - Crimes and Punishments
15 Section 404, 405, and 405A
16 Annotated Code of Maryland
17 (1992 Replacement Volume and 1995 Supplement)

18 BY adding to
19 Article - Business Regulation
20 Section 16-210(d)
21 Annotated Code of Maryland
22 (1992 Volume and 1995 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article - Business Regulation
25 Section 16-306
26 Annotated Code of Maryland
27 (1992 Volume and 1995 Supplement)

28 BY repealing and reenacting, with amendments,
29 Article - Courts and Judicial Proceedings
30 Section 4-401 (11) and (12)

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1 Annotated Code of Maryland
2 (1995 Replacement Volume and 1995 Supplement)

3 BY adding to

4 Article - Courts and Judicial Proceedings
5 Section 4-401(13)
6 Annotated Code of Maryland
7 (1995 Replacement Volume and 1995 Supplement)

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

10 **Article 27 - Crimes and Punishments**

11 404.

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

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

15 (3) "Distribute" means to:

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

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

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

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

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

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

27 (iii) Distribute to any minor a coupon redeemable for any tobacco
28 product.

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

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

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

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

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

6 (E) A PERSON WHO HOLDS A RETAILER'S LICENSE UNDER TITLE 16 OF THE
7 BUSINESS REGULATION ARTICLE SHALL DISPLAY PROMINENTLY AT EACH CASH
8 REGISTER OR OTHER LOCATION AT WHICH TOBACCO PRODUCTS ARE SOLD A SIGN
9 THAT STATES IN LETTERING AT LEAST ONE HALF INCH HIGH ON WHITE
10 BACKGROUND "WARNING: UNDER MARYLAND LAW YOU MUST BE AT LEAST 18
11 YEARS OF AGE TO BUY TOBACCO PRODUCTS".

12 405.

13 (a) [Except as provided in subsection (b) of this section, a] A person who violates
14 § 404(b) of this subheading shall be subject to:

15 (1) For a first violation, a fine of not more than \$300;

16 (2) For a second violation occurring within a 2-year period of the first
17 violation, a fine of not more than \$1,000 AND, AT THE DISCRETION OF THE COURT, A
18 SUSPENSION OF NOT MORE THAN 60 DAYS OF THE PERSON'S CIGARETTE BUSINESS
19 LICENSE; and

20 (3) For a third or subsequent violation occurring within a 2-year period of
21 [the] A prior violation, a fine of not more than \$3,000 AND, AT THE DISCRETION OF
22 THE COURT, A SUSPENSION OF THE PERSON'S CIGARETTE BUSINESS LICENSE FOR
23 AN APPROPRIATE PERIOD OF TIME OR THE REVOCATION OF THE PERSON'S
24 CIGARETTE BUSINESS LICENSE.

25 (B) A PERSON WHOSE LICENSE HAS BEEN REVOKED IN ACCORDANCE WITH
26 SUBSECTION (A)(3) OF THIS SECTION MAY NOT APPLY FOR A NEW CIGARETTE
27 BUSINESS LICENSE WITHIN A PERIOD OF 3 YEARS FROM THE DATE OF REVOCATION.

28 (C) IF A VIOLATION OF § 404(B) OF THIS SUBHEADING RESULTS IN
29 SUSPENSION OR REVOCATION OF THE PERSON'S CIGARETTE BUSINESS LICENSE, THE
30 CLERK OF THE COURT SHALL IMMEDIATELY NOTIFY THE COMPTROLLER.

31 (D) FOR A VIOLATION OF § 404(B) OF THIS SUBHEADING RELATED TO THE
32 DISTRIBUTION OF A TOBACCO PRODUCT TO A MINOR BY MEANS OF A VENDING
33 MACHINE, THE PENALTIES ESTABLISHED UNDER SUBSECTION (A) OF THIS SECTION
34 SHALL APPLY ONLY TO THE PROPRIETOR OF THE ESTABLISHMENT IN WHICH THE
35 VENDING MACHINE IS LOCATED, OR THE VENDING MACHINE OPERATOR, AS
36 DEFINED IN TITLE 16 OF THE BUSINESS REGULATION ARTICLE, OR BOTH.

37 [(b) If the requirements of § 16-209(b)(2)(ii) of the Business Regulation Article
38 are satisfied, the provisions of subsection (a) of this section do not apply to the owner of
39 a tobacco product vending machine or any other person exercising control over a tobacco
40 product vending machine if a person under 18 has purchased a tobacco product from a
41 vending machine.]

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1 [(c)] (E) For purposes of this section, a violation means a separate and distinct
2 incident at a different time and occasion.

3 (F) A LAW ENFORCEMENT OFFICER AUTHORIZED TO MAKE ARRESTS SHALL
4 ISSUE A CIVIL CITATION TO A PERSON IF THE OFFICER HAS PROBABLE CAUSE TO
5 BELIEVE THAT THE PERSON IS COMMITTING OR HAS COMMITTED A VIOLATION OF §
6 404 OF THIS SUBHEADING.

7 405A.

8 (a) A minor may not:

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

11 (2) Use any falsified identification, or use any identification other than his
12 or her own, for the purpose of obtaining or attempting to obtain tobacco products or
13 cigarette rolling papers.

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

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

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

22 (E) IT IS NOT A VIOLATION OF THIS SECTION FOR LAW ENFORCEMENT
23 PERSONNEL OR PERSONNEL AUTHORIZED BY THE DEPARTMENT OF HEALTH AND
24 MENTAL HYGIENE AND LOCAL HEALTH DEPARTMENTS TO USE MINORS TO
25 PURCHASE OR ATTEMPT TO PURCHASE TOBACCO PRODUCTS OR CIGARETTE
26 ROLLING PAPERS FOR THE PURPOSE OF MONITORING COMPLIANCE WITH § 404 OF
27 THIS SUBHEADING.

28 **Article - Business Regulation**

29 16-210.

30 (D) UPON RECEIPT OF NOTIFICATION FROM THE CLERK OF THE COURT OF A
31 LICENSE SUSPENSION OR REVOCATION FOR A SECOND, THIRD, OR SUBSEQUENT
32 VIOLATION OF ARTICLE 27, § 404(B) OF THE CODE, THE COMPTROLLER SHALL
33 SUSPEND OR REVOKE A LICENSE TO ACT AS A RETAILER, WHOLESALER, OR
34 SUBWHOLESALER, IN ACCORDANCE WITH ARTICLE 27, § 405 OF THE CODE.

35 16-306.

36 (A) Subject to the hearing provisions of § 16-307 of this subtitle, the Comptroller
37 may deny a county license to an applicant, reprimand a county licensee, or suspend or
38 revoke a county license if the applicant or licensee:

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1 (1) fraudulently or deceptively obtains or attempts to obtain a license for
2 the applicant or licensee or for another person;

3 (2) fraudulently or deceptively uses a license; or

4 (3) fails to comply with the Maryland Cigarette Sales Below Cost Act and
5 regulations adopted under it.

6 (B) UPON RECEIPT OF NOTIFICATION FROM THE CLERK OF THE COURT OF A
7 LICENSE SUSPENSION OR REVOCATION FOR A SECOND, THIRD, OR SUBSEQUENT
8 VIOLATION OF ARTICLE 27, § 404(B) OF THE CODE, THE COMPTROLLER SHALL
9 SUSPEND OR REVOKE A LICENSE TO ACT AS A RETAILER IN ACCORDANCE WITH
10 ARTICLE 27, § 405 OF THE CODE.

11 **Article - Courts and Judicial Proceedings**

12 4-401.

13 Except as provided in § 4-402 of this subtitle, and subject to the venue provisions of
14 Title 6 of this article, the District Court has exclusive original civil jurisdiction in:

15 (11) A proceeding for adjudication of a civil penalty for any violation under §
16 5-1001 of the Environment Article [of the Code] or under ARTICLE 41, § 2-101(c-1) [of
17 Article 41] of the Code or any rule or regulation issued pursuant to those sections; [and]

18 (12) A proceeding to enforce a civil penalty assessed by the Maryland
19 Division of Labor and Industry under Title 5 of the Labor and Employment Article where
20 the amount involved does not exceed \$20,000; AND

21 (13) A PROCEEDING FOR ENFORCEMENT FOR A VIOLATION UNDER
22 ARTICLE 27, § 404 OF THE CODE.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act does not prohibit
24 a county, including Baltimore City, or a municipal corporation of the State from enacting
25 an ordinance, resolution, law, or rule that is more stringent than the provisions of this Act
26 that relate to the sale or distribution of tobacco products either over the counter or
27 through vending machines.

28 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this Act
29 or the application thereof to any person or circumstance is held invalid for any reason in
30 a court of competent jurisdiction, the invalidity does not affect other provisions or any
31 other application of this Act which can be given effect without the invalid provision or
32 application, and for this purpose the provisions of this Act are declared severable.

33 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 October 1, 1996.