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**By: Delegates Morhaim, Frush, Hubbard, Schisler, Cryor, McIntosh, Finifter, Frank, Rosenberg, Nathan-Pulliam, Bobo, Conroy, Crumlin, Franchot, Genn, Goldwater, Grosfeld, Hecht, Kopp, Mandel, Marriott, Menes, Muse, Parker, Patterson, Petzold, Pitkin, Turner, Pendergrass, Benson, Billings, Dypski, Kagan, D. Davis, E. Burns, Shriver, Flanagan, Watson, Walkup, McKee, and Kittleman**

Introduced and read first time: January 20, 1997

Assigned to: Environmental Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Tobacco Products - Sale by Vending Machines**

3 FOR the purpose of prohibiting the sale of tobacco products by vending machines or  
4 other mechanical devices; establishing a certain penalty for violation of this Act;  
5 repealing certain provisions of law that provide an exception to a penalty for a  
6 certain sale of a tobacco product by the owner of a tobacco product vending  
7 machine; repealing certain provisions of law relating to acting as a vending machine  
8 operator; defining a certain term; and generally relating to the sale of tobacco  
9 products by vending machines or other mechanical devices.

10 BY adding to

11 Article - Health - General  
12 Section 24-901 through 24-903, inclusive, to be under the new subtitle "Subtitle 9.  
13 Sale of Tobacco Products by Vending Machine"  
14 Annotated Code of Maryland  
15 (1996 Replacement Volume and 1996 Supplement)

16 BY repealing and reenacting, without amendments,

17 Article 27 - Crimes and Punishments  
18 Section 404  
19 Annotated Code of Maryland  
20 (1996 Replacement Volume)

21 BY repealing and reenacting, with amendments,

22 Article 27 - Crimes and Punishments  
23 Section 405  
24 Annotated Code of Maryland  
25 (1996 Replacement Volume)

26 BY repealing and reenacting, with amendments,

27 Article - Business Regulation

2  
1 Section 16-101, 16-201, 16-202, 16-203, 16-204, 16-205, 16-206, 16-207(c)(3)(ii),  
2 16-208, 16-209, 16-210, 16-214, 16-215, 16-218, 16-301, and 16-305  
3 Annotated Code of Maryland  
4 (1992 Volume and 1996 Supplement)

5 BY repealing  
6 Article - Business Regulation  
7 Section 16-220 and 16-221  
8 Annotated Code of Maryland  
9 (1992 Volume and 1996 Supplement)

10 BY repealing and reenacting, with amendments,  
11 Article - Commercial Law  
12 Section 11-501 and 11-503  
13 Annotated Code of Maryland  
14 (1990 Replacement Volume and 1996 Supplement)

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

17 **Article - Health - General**

18 SUBTITLE 9. SALE OF TOBACCO PRODUCTS BY VENDING MACHINE.

19 24-901.

20 IN THIS SUBTITLE, "TOBACCO PRODUCT" MEANS ANY SUBSTANCE CONTAINING  
21 TOBACCO, INCLUDING CIGARETTES, CIGARS, SMOKING TOBACCO, SNUFF, OR  
22 SMOKELESS TOBACCO.

23 24-902.

24 A PERSON MAY NOT SELL OR OFFER FOR SALE A TOBACCO PRODUCT BY  
25 MEANS OF A VENDING MACHINE OR OTHER MECHANICAL DEVICE USED FOR  
26 DISPENSING TOBACCO PRODUCTS.

27 24-903.

28 A PERSON WHO VIOLATES § 24-902 OF THIS SUBTITLE IS GUILTY OF A  
29 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF \$500.

30 **Article 27 - Crimes and Punishments**

31 404.

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

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

35 (3) "Distribute" means to:

3

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

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

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

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

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

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

12 (iii) Distribute to any minor a coupon redeemable for any tobacco  
13 product.

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

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

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

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

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

26 405.

27 (a) [Except as provided in subsection (b) of this section, a] A person who violates  
28 § 404(b) of this subheading shall be subject to:

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

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

32 (3) For a third or subsequent violation occurring within a 2-year period of  
33 the prior violation, a fine of not more than \$3,000.

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

4

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

3 **Article - Business Regulation**

4 16-101.

5 (a) In this title the following words have the meanings indicated.

6 (b) "Cigarette" means any size or shaped roll for smoking that is made of tobacco  
7 or tobacco mixed with another ingredient and wrapped in paper or in any other material  
8 except tobacco.

9 (c) "County license" means a license issued by the clerk to sell cigarettes at retail  
10 in a county.

11 (d) "Sell" means to exchange or transfer, or to agree to exchange or transfer, title  
12 or possession of property, in any manner or by any means, for consideration.

13 (e) [(1)] "Sell cigarettes at retail" means to sell cigarettes to a consumer.

14 [(2) "Sell cigarettes at retail" includes selling cigarettes through a vending  
15 machine.]

16 16-201.

17 (a) In this subtitle the following words have the meanings indicated.

18 (b) "License" means:

19 (1) a license issued by the Comptroller under § 16-205(a) of this subtitle to:

20 (i) act as a manufacturer;

21 (ii) act as a subwholesaler;

22 (iii) [act as a vending machine operator;

23 (iv)] act as a wholesaler; or

24 [(v)] (IV) act as a storage warehouse; or

25 (2) a license issued by the clerk under § 16-205(b) of this subtitle to act as  
26 a retailer.

27 (c) "Licensed manufacturer" means a person licensed by the Comptroller under §  
28 16-205(a) of this subtitle to act as a manufacturer.

29 (d) "Licensed retailer" means a person licensed by the clerk under § 16-205(b) of  
30 this subtitle to act as a retailer.

31 (e) "Licensed subwholesaler" means a person licensed by the Comptroller under  
32 § 16-205(a) of this subtitle to act as a subwholesaler.

33 [(f) "Licensed vending machine operator" means a person licensed by the  
34 Comptroller under § 16-205(a) of this subtitle to act as a vending machine operator.]

5

1 [(g)] (F) "Licensed wholesaler" means a person licensed by the Comptroller  
2 under § 16-205(a) of this subtitle to act as a wholesaler.

3 [(h)] (G) "Licensed storage warehouse" means a facility licensed by the  
4 Comptroller under § 16-205(a) of this subtitle to act as a storage warehouse.

5 [(i)] (H) "Manufacturer" means a person who:

6 (1) operates one or more cigarette manufacturing plants within the United  
7 States; and

8 (2) (i) sells unstamped cigarettes to a licensed cigarette wholesaler  
9 located in Maryland;

10 (ii) unless otherwise prohibited or restricted under local law, this  
11 article, or Article 27 of the Code, distributes sample cigarettes to consumers located in  
12 Maryland; or

13 (iii) stores unstamped cigarettes in a cigarette storage warehouse in  
14 Maryland for subsequent shipment to licensed wholesalers, federal reservations, or  
15 persons out of State.

16 [(j)] (I) "Retailer" means a person who:

17 (1) [sells cigarettes to consumers through vending machines on fewer than  
18 40 premises;

19 (2) otherwise] sells cigarettes to consumers; or

20 [(3)] (2) holds cigarettes for sale to consumers.

21 [(k)] (J) "Stamped cigarettes" means a package of cigarettes to which tobacco tax  
22 stamps are affixed in the amount and manner required by § 12-304 of the Tax - General  
23 Article.

24 [(l)] (K) "Storage warehouse" means a storage facility in Maryland operated for  
25 the purpose of storing unstamped cigarettes on behalf of a licensed cigarette  
26 manufacturer.

27 [(m)] (L) (1) "Subwholesaler" means a person who:

28 (i) holds stamped cigarettes for sale to another person for resale; or

29 (ii) sells stamped cigarettes to another person for resale.

30 (2) "Subwholesaler" does not include a person who sells unstamped  
31 cigarettes or holds unstamped cigarettes for sale.

32 [(n)] (M) "Unstamped cigarettes" means a package of cigarettes to which tobacco  
33 tax stamps are not affixed in the amount and manner required by § 12-304 of the Tax -  
34 General Article.

35 [(o)] "Vending machine operator" means a person who:

6

1 (1) holds cigarettes for sale to consumers through vending machines on 40  
2 or more premises; or

3 (2) sells cigarettes to consumers through vending machines on 40 or more  
4 premises.]

5 [(p)] (N) "Wholesaler" means a person who:

6 (1) holds cigarettes for sale to another person for resale; or

7 (2) sells cigarettes to another person for resale.

8 16-202.

9 (a) Except as provided in subsection (b) of this section, a person must have an  
10 appropriate license whenever the person acts as a manufacturer, retailer, storage  
11 warehouse, subwholesaler, [vending machine operator,] or wholesaler in the State.

12 (b) A person need not get a retailer license to act as a retailer at a vending stand  
13 operated under a trader's license issued to Blind Industries and Services of Maryland.

14 (c) A license to act as a retailer is required for each place of business where a  
15 person acts as a retailer.

16 16-203.

17 (a) An applicant for a license to act as a manufacturer shall maintain an  
18 established place of business for the manufacture and storage of cigarettes.

19 (b) An applicant for a license to act as a storage warehouse shall maintain an  
20 established place of business for the storage of unstamped cigarettes.

21 (c) An applicant for a license to act as a subwholesaler shall maintain:

22 (1) an established place of business, including warehouse facilities, for the  
23 sale of cigarettes; and

24 (2) necessary equipment and vehicles for the storage and distribution of  
25 cigarettes.

26 [(d) An applicant for a license to act as a vending machine operator shall maintain  
27 an established place of business, including warehouse facilities, for the purchase, storage,  
28 and distribution of cigarettes.]

29 [(e)] (D) An applicant for a license to act as a wholesaler shall maintain:

30 (1) an established place of business, including warehouse facilities, for the  
31 sale of cigarettes; and

32 (2) necessary equipment and vehicles for the storage and distribution of  
33 cigarettes.

34 16-204.

35 (a) An applicant for a license to act as a manufacturer shall:

7

1 (1) submit an application to the Comptroller on the form and containing the  
2 information that the Comptroller requires; and

3 (2) pay to the Comptroller a fee of \$25.

4 (b) (1) An applicant for a license to act as a retailer shall:

5 (i) obtain the county license required under § 16-301 of this title;

6 (ii) submit to the clerk an application for each permanent or  
7 temporary place of business located in the same enclosure and operated by the same  
8 applicant; and

9 (iii) pay to the clerk a fee of \$30.

10 (2) The application shall:

11 (i) be made on the form that the clerk requires; and

12 (ii) contain the information that the Comptroller requires.

13 (c) An applicant for a license to act as a storage warehouse shall:

14 (1) submit an application to the Comptroller on the form and containing the  
15 information that the Comptroller requires; and

16 (2) pay to the Comptroller a fee of \$25.

17 (d) An applicant for a license to act as a subwholesaler shall:

18 (1) submit an application to the Comptroller on the form and containing the  
19 information that the Comptroller requires; and

20 (2) pay to the Comptroller a fee of:

21 (i) \$500 for a 1-year term; or

22 (ii) the amount that results when \$500 is prorated to the nearest  
23 month, if the application is for less than a 1-year term.

24 [(e) An applicant for a license to act as a vending machine operator shall:

25 (1) obtain the county license required under § 16-301 of this title;

26 (2) submit an application to the Comptroller on the form and containing the  
27 information that the Comptroller requires; and

28 (3) pay to the Comptroller a fee of \$500.]

29 [(f)] (E) An applicant for a license to act as a wholesaler shall:

30 (1) submit an application to the Comptroller on the form and containing the  
31 information that the Comptroller requires; and

32 (2) pay to the Comptroller a fee of \$750.



9

1 (2) buy stamped cigarettes from a wholesaler or another subwholesaler.

2 [(e) A vending machine operator license authorizes the licensee to:

3 (1) act as a vending machine operator; and

4 (2) buy stamped cigarettes from a subwholesaler or wholesaler.]

5 [(f)] (E) A wholesaler license authorizes the licensee to:

6 (1) act as a wholesaler;

7 (2) buy unstamped cigarettes directly from a cigarette manufacturer;

8 (3) hold unstamped cigarettes;

9 (4) buy tobacco tax stamps as authorized by § 12-303 of the Tax - General  
10 Article;

11 (5) transport unstamped cigarettes in the State; and

12 (6) sell unstamped cigarettes to another licensed wholesaler if the  
13 Comptroller specifically authorizes.

14 16-207.

15 (c) Before a license issued under this subtitle expires, the licensee may renew it  
16 for an additional 1-year term, if the licensee:

17 (3) pays to the issuing official:

18 (ii) if the license is issued by the Comptroller, the renewal fee required  
19 under § [16-204(h)] 16-204(G) of this subtitle.

20 16-208.

21 (a) (1) A licensed retailer [or licensed vending machine operator] may not  
22 assign the license.

23 (2) If a licensed subwholesaler or licensed wholesaler sells the licensee's  
24 cigarette business and pays to the Comptroller a license assignment fee of \$10, the  
25 licensee may assign the license to the buyer of the business.

26 (b) If the cigarette business of a licensee is transferred because of bankruptcy,  
27 death, incompetency, receivership, or otherwise by operation of law, the Comptroller  
28 shall transfer the license without charge to the new owner of the licensee's business.

29 (c) (1) If a licensed subwholesaler or licensed wholesaler surrenders the license  
30 to the Comptroller and if no disciplinary proceedings are pending against the licensee,  
31 the Comptroller shall refund a pro rata part of the license fee for the unexpired term of  
32 the license.

33 (2) A licensed retailer [or licensed vending machine operator] is not  
34 allowed a refund for the unexpired term of the license.

10

1 16-209.

2 [(a)] A licensee shall display a license in the way that the Comptroller requires by  
3 regulation.

4 [(b)] A licensee who sells cigarettes through a vending machine:

5 (1) shall place each package of cigarettes in the machine so that when the  
6 package is visible the tax stamps required by § 12-304 of the Tax - General Article are  
7 also visible; and

8 (2) in the way that the Comptroller requires by regulation, shall:

9 (i) identify each vending machine with a conspicuous label that states  
10 the licensee's name, address, and telephone number; and

11 (ii) display on a conspicuous label applicable prohibitions and  
12 penalties under Article 27, §§ 404 and 405 of the Code.]

13 16-210.

14 (a) Subject to the hearing provisions of § 16-211 of this subtitle, the Comptroller  
15 may deny a license to an applicant, reprimand a licensee, or suspend or revoke a license  
16 if the applicant or licensee:

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

19 (2) fraudulently or deceptively uses a license;

20 (3) fails to comply with the Maryland Cigarette Sales Below Cost Act or  
21 regulations adopted under that Act; or

22 (4) buys cigarettes for resale:

23 (i) in violation of a license; or

24 (ii) from a person who is not a cigarette manufacturer, licensed  
25 subwholesaler, [licensed vending machine operator,] or licensed wholesaler.

26 (b) Subject to the hearing provisions of § 16-211 of this subtitle, the Comptroller  
27 may suspend or revoke a license if the licensee violates:

28 (1) Title 12 of the Tax - General Article, or regulations adopted under that  
29 title; or

30 (2) Title 16 of the Business Regulation Article, or regulations adopted  
31 under that title.

32 (c) Subject to the hearing provisions of § 16-211 of this subtitle, the Comptroller  
33 shall deny a license to any applicant who has had a license revoked under this section  
34 until:

35 (1) 1 year has passed since the license was revoked; and

11

1 (2) it satisfactorily appears to the Comptroller that the applicant will comply  
2 with this title and any regulations adopted under this title.

3 16-214.

4 (a) Except as otherwise provided in § 16-202(b) of this subtitle, a person may not  
5 act, attempt to act, or offer to act as a manufacturer, retailer, storage warehouse,  
6 subwholesaler, [vending machine operator,] or wholesaler in the State unless the person  
7 has an appropriate license.

8 (b) (1) A person who violates this section is guilty of a misdemeanor and, on  
9 conviction, is subject to a fine of \$1,000 or imprisonment not exceeding 30 days or both.

10 (2) Each day that a violation of this section continues is a separate offense.

11 16-215.

12 (a) Unless authorized by a license, a person may not accept delivery of unstamped  
13 cigarettes.

14 (b) On receipt of a package of cigarettes, a retailer[,] OR subwholesaler[, or  
15 vending machine operator] immediately shall:

16 (1) examine the package to find out whether tobacco tax stamps are affixed  
17 properly to the package as required by § 12-304 of the Tax - General Article; and

18 (2) reject any unstamped or improperly stamped cigarettes by:

19 (i) returning them to the seller or consignor; or

20 (ii) delivering them to a common carrier for return to the seller or  
21 consignor.

22 (c) (1) There is a presumption that any unstamped cigarettes in the possession  
23 of a retailer, subwholesaler, [vending machine operator,] or wholesaler are held in  
24 violation of this subtitle.

25 (2) A retailer, subwholesaler, [vending machine operator,] or wholesaler  
26 who holds unstamped cigarettes has the burden to prove that the cigarettes are not held  
27 in violation of this subtitle.

28 16-218.

29 (a) Each subwholesaler and each wholesaler:

30 (1) shall get an invoice for each purchase of cigarettes;

31 (2) shall keep a record of all cigarettes received, to which the subwholesaler  
32 and wholesaler shall post each day:

33 (i) the invoice number;

34 (ii) the date of receipt;

35 (iii) the quantity received;

12

1 (iv) the brand; and

2 (v) the name of the person from whom the cigarettes are received;

3 (3) for cigarette sales to retailers:

4 (i) shall keep a record of the name and address of each retailer to  
5 whom a sale is made; and

6 (ii) except for a transfer of cigarettes to retail stock by a written  
7 memorandum, shall prepare for each sale an invoice that shows the political subdivision  
8 where the retailer is located; and

9 (4) shall keep a complete and accurate record of each sale of cigarettes to  
10 an out-of-state person for resale to out-of-state consumers.

11 (b) (1) Except as provided in paragraph (2) of this subsection, each  
12 subwholesaler and each wholesaler shall make an inventory record each month of all  
13 cigarettes on the premises or under the control of the subwholesaler or wholesaler:

14 (i) at the beginning or end of the month; or

15 (ii) on another specific day of the month, if the subwholesaler or  
16 wholesaler finds it more practical to take inventory on that day and notifies the  
17 Comptroller that inventory will be taken on that day.

18 (2) [Cigarettes in a vending machine or cigarettes] CIGARETTES  
19 transferred to retail stock by written memorandum need not be included in the inventory  
20 record.

21 (c) Each subwholesaler and each wholesaler shall:

22 (1) keep the records required by this section for 6 years or for a shorter time  
23 set by the Comptroller; and

24 (2) allow the Comptroller to examine the records.

25 [16-220.

26 (a) The Comptroller shall seal a vending machine to prevent the sale or removal  
27 of cigarettes from the machine if:

28 (1) a tax stamp is not visible on each visible package of cigarettes in the  
29 machine, as required by § 16-209(b)(1) of this subtitle; or

30 (2) the machine is not labeled as required by § 16-209(b)(2) of this subtitle.

31 (b) If the violation for which a vending machine is sealed has been corrected in  
32 the presence of the Comptroller or the Comptroller's designee, the Comptroller shall  
33 remove the seal.]

34 [16-221.

35 (a) Except as otherwise provided in § 16-220 of this subtitle, a person may not  
36 remove or tamper with a seal placed on a vending machine by the Comptroller.

13

1 (b) A person who willfully violates this section is guilty of a misdemeanor and, on  
2 conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year  
3 or both.]

4 16-301.

5 Whenever a person sells cigarettes at retail in a county, the person must have a  
6 county license for[:

7 (1) each place of business[; and

8 (2) each vending machine, if the applicant sells cigarettes through a vending  
9 machine].

10 16-305.

11 A county licensee shall display the county license in a conspicuous place[:

12 (1) in the place of business for which it is issued[; or

13 (2) on the premises where the machine is located, if the licensee sells  
14 cigarettes through a vending machine].

15 **Article - Commercial Law**

16 11-501.

17 (a) In this subtitle the following words have the meanings indicated.

18 (b) "Basic cost of cigarettes" means the lesser of the invoice cost or the  
19 replacement cost of cigarettes to the retailer or wholesaler; plus any in-freight charge to  
20 the wholesaler otherwise not included in the invoice cost or the replacement cost; plus,  
21 for the wholesaler, the full face value of any applicable Maryland cigarette tax payable by  
22 the wholesaler; minus any trade discount or discount for cash.

23 (c) (1) "Cigarettes" means any size or shaped roll for smoking that is made of  
24 tobacco or tobacco mixed with another ingredient and wrapped in paper or in any other  
25 material except tobacco.

26 (2) "Cigarettes" does not include cigars.

27 (d) (1) "Cost to the retailer", subject to the special cost provisions of § 11-503  
28 of this subtitle, means the basic cost of cigarettes to a retailer, which includes the cost to  
29 a wholesaler, plus a markup to cover his cost of doing business, which cost of doing  
30 business, in the absence of satisfactory proof of a lesser cost, is presumed to be 8 percent  
31 of the basic cost of cigarettes to him.

32 (2) As to each carton of 200 cigarettes, a fractional part of a cent equal to  
33 one-tenth of a cent or more in the cost to the retailer shall be rounded off to the next  
34 higher cent.

35 (e) (1) "Cost to the wholesaler", subject to the special cost provisions of §  
36 11-503 of this subtitle, means the basic cost of cigarettes to a wholesaler, plus a markup  
37 to cover his cost of doing business, which cost of doing business:

14

1 (i) Includes the cartage cost to a retailer; and

2 (ii) In the absence of satisfactory proof of a lesser cost, is presumed to  
3 be 5 percent of the basic cost of cigarettes to him.

4 (2) As to each carton of 200 cigarettes, a fractional part of a cent equal to  
5 one-tenth of a cent or more in the cost to the wholesaler shall be rounded off to the next  
6 higher cent.

7 (f) "Person" includes an individual, corporation, business trust, estate, trust,  
8 partnership, association, two or more persons having a joint or common interest, or any  
9 other legal or commercial entity.

10 (g) "Replacement cost" means the cost per unit for which the cigarettes could  
11 have been bought by the wholesaler or retailer at any time within 30 days before the date  
12 of sale by him if bought in the same quantity as his last purchase of the cigarettes.

13 (h) (1) "Retailer" includes any person engaged in the business of making retail  
14 sales of cigarettes within the State at a store, stand, booth, or concession, [through  
15 vending machines,] or otherwise.

16 (2) If the person is engaged in the business of making both retail sales of  
17 cigarettes and wholesale sales of cigarettes, the word only applies to the retail sales of  
18 cigarettes portion of the business.

19 (i) "Retail sale of cigarettes" includes any sale whereby cigarettes are sold for a  
20 valuable consideration, including an exchange or barter [and a sale through a vending  
21 machine], made in the ordinary course of trade or the usual conduct of the seller's  
22 business to a purchaser for consumption or use other than resale.

23 (j) "Sell" includes advertise, offer to sell, or offer for sale.

24 [(k) "Vending machine operator" means a person who:

25 (1) Makes retail sales of cigarettes or has cigarettes in his possession with  
26 the intent to sell them exclusively at retail through the medium of a vending machine or  
27 any other mechanical device used for dispensing cigarettes;

28 (2) Owns, operates, and services vending machines or other mechanical  
29 devices used to dispense cigarettes on 40 or more premises; and

30 (3) Services the machines or devices by maintaining an established place of  
31 business for the purchase of cigarettes, including warehousing facilities for the storage  
32 and distribution of cigarettes.]

33 [(l) (K) (1) "Wholesale sale of cigarettes" includes any sale whereby cigarettes  
34 are sold for a valuable consideration, made in the ordinary course of trade or in the usual  
35 conduct of the seller's business to a retailer, other than to a [vending machine operator  
36 or to a] sub-wholesaler described in subsection [(m) (L) (2) of this section, for the bona  
37 fide purpose of resale.

15

1 (2) "Wholesale sale of cigarettes" includes any transfer of cigarettes on  
2 consignment or otherwise, whereby title is retained by the seller as security for the  
3 payment of the purchase price.

4 [(m)] (L) (1) "Wholesaler" means a person who purchases cigarettes directly  
5 from a manufacturer.

6 (2) "Wholesaler" includes a person, who, as a sub-wholesaler:

7 (i) Purchases cigarettes from another wholesaler solely for the  
8 purpose of bona fide resale to retailers other than those directly or indirectly owned,  
9 affiliated, or controlled by him; and

10 (ii) Services the retailers by maintaining an established place of  
11 business for the sale of cigarettes, including warehouse facilities, adequate inventory,  
12 proper accounting records, and necessary equipment and vehicles for the storage and  
13 distribution of cigarettes.

14 (3) If the person is engaged in the business of making both wholesale sales  
15 of cigarettes and retail sales of cigarettes, the word only applies to the wholesale sales of  
16 cigarettes portion of the business.

17 11-503.

18 (a) In a wholesale sale of cigarettes, the presumptive wholesale markup of 5  
19 percent provided for in § 11-501(e) may be reduced by 2 cents for each carton of 200  
20 cigarettes, if:

21 (1) The cigarettes are not delivered unless their full price is received by the  
22 wholesaler at or before delivery; and

23 (2) The purchaser performs or pays for the cartage cost of the cigarettes to  
24 the place of business of the purchaser.

25 (b) (1) In the absence of satisfactory proof of a lesser aggregate cost of doing  
26 business, a [vending machine operator or] retailer who purchases cigarettes at prices  
27 ordinarily invoiced to a wholesaler and who receives the wholesaler's discounts on them  
28 shall:

29 (i) First, add to his basic cost of cigarettes the wholesale markup of 5  
30 percent provided for in § 11-501 (e) to cover the cost of doing business as a wholesaler;  
31 and

32 (ii) Then, on the resultant sum, add the retail markup of 8 percent  
33 provided for in § 11-501 (d).

34 (2) If the discount received by the [vending machine operator or] retailer is  
35 less than that ordinarily allowed to wholesalers, the wholesale markup of 5 percent may  
36 be reduced by the difference between the discount ordinarily allowed to wholesalers and  
37 the discount received by the retailer [or vending machine operator].

38 (c) (1) A wholesaler who sells cigarettes to another wholesaler [or to a vending  
39 machine operator] is not required to include in his selling price the cost to the  
40 wholesaler. However, in the absence of satisfactory proof of a lesser cost for the service

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1 rendered, the wholesaler shall include in the selling price his basic cost of cigarettes, plus  
2 a charge of 1 percent of his basic cost of cigarettes.

3 (2) If a wholesaler purchases cigarettes from another wholesaler, then, on  
4 resale of the cigarettes to a retailer, he is the wholesaler for the purposes of this subtitle.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
6 October 1, 1997.