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HB 224/96 - ENV

1997 Regular Session
7r1474
CF 7r0435

By: Senators Forehand, Frosh, Ruben, Boozer, and Dorman

Introduced and read first time: January 31, 1997

Assigned to: Judicial Proceedings

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
28 Section 16-101, 16-201, 16-202, 16-203, 16-204, 16-205, 16-206, 16-207(c)(3)(ii),
29 16-208, 16-209, 16-210, 16-214, 16-215, 16-218, 16-301, and 16-305
30 Annotated Code of Maryland

2

1 (1992 Volume and 1996 Supplement)

2 BY repealing

3 Article - Business Regulation

4 Section 16-220 and 16-221

5 Annotated Code of Maryland

6 (1992 Volume and 1996 Supplement)

7 BY repealing and reenacting, with amendments,

8 Article - Commercial Law

9 Section 11-501 and 11-503

10 Annotated Code of Maryland

11 (1990 Replacement Volume and 1996 Supplement)

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

14 **Article - Health - General**

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

16 24-901.

17 IN THIS SUBTITLE, "TOBACCO PRODUCT" MEANS ANY SUBSTANCE CONTAINING
18 TOBACCO, INCLUDING CIGARETTES, CIGARS, SMOKING TOBACCO, SNUFF, OR
19 SMOKELESS TOBACCO.

20 24-902.

21 A PERSON MAY NOT SELL OR OFFER FOR SALE A TOBACCO PRODUCT BY
22 MEANS OF A VENDING MACHINE OR OTHER MECHANICAL DEVICE USED FOR
23 DISPENSING TOBACCO PRODUCTS.

24 24-903.

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

27 **Article 27 - Crimes and Punishments**

28 404.

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

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

32 (3) "Distribute" means to:

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

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

3

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

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

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

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

10 (iii) Distribute to any minor a coupon redeemable for any tobacco
11 product.

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

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

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

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

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

24 405.

25 (a) [Except as provided in subsection (b) of this section, a] A person who violates
26 § 404(b) of this subheading shall be subject to:

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

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

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

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

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

4

1 **Article - Business Regulation**

2 16-101.

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

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

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

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

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

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

14 16-201.

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

16 (b) "License" means:

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

18 (i) act as a manufacturer;

19 (ii) act as a subwholesaler;

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

21 (iv)] act as a wholesaler; or

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

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

25 (c) "Licensed manufacturer" means a person licensed by the Comptroller under §
26 16-205(a) of this subtitle to act as a manufacturer.

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

29 (e) "Licensed subwholesaler" means a person licensed by the Comptroller under
30 § 16-205(a) of this subtitle to act as a subwholesaler.

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

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

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

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

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

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

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

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

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

15 (1) [sells cigarettes to consumers through vending machines on fewer than
16 40 premises;

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

18 [(3)] (2) holds cigarettes for sale to consumers.

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

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

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

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

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

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

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

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

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

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

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

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

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

6 16-202.

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

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

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

14 16-203.

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

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

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

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

22 (2) necessary equipment and vehicles for the storage and distribution of
23 cigarettes.

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

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

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

30 (2) necessary equipment and vehicles for the storage and distribution of
31 cigarettes.

32 16-204.

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

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

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

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

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

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

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

8 (2) The application shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 [(g)] (F) If a person has had a license revoked under § 16-210 of this subtitle, the
32 person may not reapply for a license within 1 year after the date when the prior license
33 was revoked.

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1 [(h)] (G) (1) In addition to the license fee otherwise required under this
2 section:

3 (i) an applicant for the initial issuance of a license issued by the
4 Comptroller under this title shall pay to the Comptroller a nonrefundable application fee
5 of \$200; and

6 (ii) an applicant for renewal of a license issued by the Comptroller
7 under this title shall pay to the Comptroller a renewal fee of \$30.

8 (2) The application and renewal fees required under this subsection do not
9 apply to a license that is issued by the clerk or to a storage warehouse license application.

10 16-205.

11 (a) The Comptroller shall issue an appropriate license to each applicant who
12 meets the requirements of this subtitle for a license to act as a manufacturer, storage
13 warehouse, subwholesaler, [vending machine operator,] or wholesaler.

14 (b) The clerk shall issue to each applicant who meets the requirements of this
15 subtitle a license to act as a retailer.

16 16-206.

17 (a) A manufacturer license authorizes the licensee to:

18 (1) sell unstamped cigarettes to a licensed cigarette wholesaler located in
19 Maryland;

20 (2) except as otherwise prohibited or restricted under local law, this article,
21 or Article 27 of the Code, distribute sample cigarettes to consumers located in Maryland;
22 and

23 (3) store unstamped cigarettes in a licensed cigarette storage warehouse for
24 subsequent shipment to licensed wholesalers, federal reservations, or persons out of
25 State.

26 (b) A retailer license authorizes the licensee to:

27 (1) act as a retailer; and

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

29 (c) A storage warehouse license authorizes the licensee to operate a storage
30 facility in Maryland for the purpose of storing unstamped cigarettes on behalf of a
31 licensed cigarette manufacturer.

32 (d) A subwholesaler license authorizes the licensee to:

33 (1) act as a subwholesaler; and

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

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

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

9

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

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

3 (1) act as a wholesaler;

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

5 (3) hold unstamped cigarettes;

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

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

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

11 16-207.

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

14 (3) pays to the issuing official:

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

17 16-208.

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

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

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

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

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

32 16-209.

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

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

10

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

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

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

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

9 16-210.

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

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

15 (2) fraudulently or deceptively uses a license;

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

18 (4) buys cigarettes for resale:

19 (i) in violation of a license; or

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

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

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

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

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

31 (1) 1 year has passed since the license was revoked; and

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

34 16-214.

35 (a) Except as otherwise provided in § 16-202(b) of this subtitle, a person may not
36 act, attempt to act, or offer to act as a manufacturer, retailer, storage warehouse,

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1 subwholesaler, [vending machine operator,] or wholesaler in the State unless the person
2 has an appropriate license.

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

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

6 16-215.

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

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

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

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

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

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

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

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

23 16-218.

24 (a) Each subwholesaler and each wholesaler:

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

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

28 (i) the invoice number;

29 (ii) the date of receipt;

30 (iii) the quantity received;

31 (iv) the brand; and

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

33 (3) for cigarette sales to retailers:

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

29 make contributions to social security for self-employment; and

12

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

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

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

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

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

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

16 (c) Each subwholesaler and each wholesaler shall:

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

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

20 [16-220.

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

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

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

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

29 [16-221.

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

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

35 16-301.

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

13

1 (1) each place of business[; and

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

4 16-305.

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

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

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

9 **Article - Commercial Law**

10 11-501.

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

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

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

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

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

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

29 (e) (1) "Cost to the wholesaler", subject to the special cost provisions of §
30 11-503 of this subtitle, means the basic cost of cigarettes to a wholesaler, plus a markup
31 to cover his cost of doing business, which cost of doing business:

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

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

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

14

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

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

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

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

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

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

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

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

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

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

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

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

35 [(m) (L) (1) "Wholesaler" means a person who purchases cigarettes directly
 36 from a manufacturer.

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

15

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

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

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

11 11-503.

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

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

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

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

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

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

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

32 (c) (1) A wholesaler who sells cigarettes to another wholesaler [or to a vending
33 machine operator] is not required to include in his selling price the cost to the
34 wholesaler. However, in the absence of satisfactory proof of a lesser cost for the service
35 rendered, the wholesaler shall include in the selling price his basic cost of cigarettes, plus
36 a charge of 1 percent of his basic cost of cigarettes.

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

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