

HOUSE BILL 172

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HB 271/97 - ENV

1998 Regular Session
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By: **Delegates Morhaim, Frush, Hubbard, D. Davis, Nathan-Pulliam,
Rosenberg, Doory, Kopp, Leopold, Finifter, Pitkin, Frank, Marriott,
Mandel, Grosfeld, Hammen, R. Baker, Patterson, Muse, Crumlin,
Conroy, Bobo, Moe, Pendergrass, Goldwater, McKee, Menes, and Kagan**

Introduced and read first time: January 21, 1998
Assigned to: Environmental Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 28, 1998

CHAPTER _____

1 AN ACT concerning

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

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

11 BY adding to
12 Article - Health - General
13 Section 24-901 through ~~24-903~~ 24-904, inclusive, to be under the new subtitle
14 "Subtitle 9. Sale of Tobacco Products by Vending Machine"
15 Annotated Code of Maryland
16 (1996 Replacement Volume and 1997 Supplement)

17 BY repealing and reenacting, without amendments,
18 Article 27 - Crimes and Punishments
19 Section 404
20 Annotated Code of Maryland
21 (1996 Replacement Volume and 1997 Supplement)

1 BY repealing and reenacting, with amendments,
2 Article 27 - Crimes and Punishments
3 Section 405
4 Annotated Code of Maryland
5 (1996 Replacement Volume and 1997 Supplement)

6 ~~BY repealing and reenacting, with amendments,~~
7 ~~Article - Business Regulation~~
8 ~~Section 16-101, 16-201, 16-202, 16-203, 16-204, 16-205, 16-206,~~
9 ~~16-207(c)(3)(ii), 16-208, 16-209, 16-210, 16-214, 16-215, 16-218, 16-301,~~
10 ~~and 16-305~~
11 ~~Annotated Code of Maryland~~
12 ~~(1992 Volume and 1997 Supplement)~~

13 ~~BY repealing~~
14 ~~Article - Business Regulation~~
15 ~~Section 16-220 and 16-221~~
16 ~~Annotated Code of Maryland~~
17 ~~(1992 Volume and 1997 Supplement)~~

18 ~~BY repealing and reenacting, with amendments,~~
19 ~~Article - Commercial Law~~
20 ~~Section 11-501 and 11-503~~
21 ~~Annotated Code of Maryland~~
22 ~~(1990 Replacement Volume and 1997 Supplement)~~

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

25 **Article - Health - General**

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

27 24-901.

28 IN THIS SUBTITLE, "TOBACCO PRODUCT" MEANS ANY SUBSTANCE CONTAINING
29 TOBACCO, INCLUDING CIGARETTES, CIGARS, SMOKING TOBACCO, SNUFF, OR
30 SMOKELESS TOBACCO.

31 24-902.

32 (A) A PERSON MAY NOT SELL OR OFFER FOR SALE A TOBACCO PRODUCT BY
33 MEANS OF A VENDING MACHINE OR OTHER MECHANICAL DEVICE USED FOR
34 DISPENSING TOBACCO PRODUCTS.

1 (B) THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION DO NOT APPLY TO
2 A VENDING MACHINE LOCATED IN AN ESTABLISHMENT THAT IS BONA FIDE
3 FRATERNAL OR VETERANS ORGANIZATION.

4 24-903.

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

7 2-904.

8 THE PROVISIONS OF § 24-902 OF THIS SUBTITLE DO NOT APPLY TO A SALE OR
9 OFFER FOR SALE OF A TOBACCO PRODUCT BY MEANS OF A VENDING MACHINE USED
10 FOR DISPENSING TOBACCO PRODUCTS THAT:

11 (1) ACCEPTS ONLY TOKENS; AND

12 (2) WAS IN USE ON JANUARY 1, 1999.

13 **Article 27 - Crimes and Punishments**

14 404.

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

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

18 (3) "Distribute" means to:

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

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

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

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

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

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

30 (iii) Distribute to any minor a coupon redeemable for any tobacco
31 product.

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

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

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

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

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

15 405.

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

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

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

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

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

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

30 ~~Article—Business Regulation~~

31 ~~16-101.~~

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

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

1 (e) "County license" means a license issued by the clerk to sell cigarettes at
2 retail in a county.

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

5 (e) ~~{(1)}~~ "Sell cigarettes at retail" means to sell cigarettes to a consumer.

6 ~~{(2)}~~ "Sell cigarettes at retail" includes selling cigarettes through a
7 vending machine.]

8 16-201.

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

10 (b) "License" means:

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

13 (i) act as a manufacturer;

14 (ii) act as a subwholesaler;

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

16 (iv)] act as a wholesaler; or

17 ~~{(v)}~~ (IV) act as a storage warehouse; or

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

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

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

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

26 ~~{(f)}~~ "Licensed vending machine operator" means a person licensed by the
27 Comptroller under § 16-205(a) of this subtitle to act as a vending machine operator.]

28 ~~{(g)}~~ (F) "Licensed wholesaler" means a person licensed by the Comptroller
29 under § 16-205(a) of this subtitle to act as a wholesaler.

30 ~~{(h)}~~ (G) "Licensed storage warehouse" means a facility licensed by the
31 Comptroller under § 16-205(a) of this subtitle to act as a storage warehouse.

- 1 ~~(i)~~ (H) "Manufacturer" means a person who:
- 2 (1) operates one or more cigarette manufacturing plants within the
- 3 United States; and
- 4 (2) (i) sells unstamped cigarettes to a licensed cigarette wholesaler
- 5 located in Maryland;
- 6 (ii) ~~unless otherwise prohibited or restricted under local law, this~~
- 7 ~~article, or Article 27 of the Code, distributes sample cigarettes to consumers located in~~
- 8 ~~Maryland; or~~
- 9 (iii) stores unstamped cigarettes in a cigarette storage warehouse in
- 10 Maryland for subsequent shipment to licensed wholesalers, federal reservations, or
- 11 persons out of State.
- 12 ~~(j)~~ (I) "Retailer" means a person who:
- 13 (1) ~~sells cigarettes to consumers through vending machines on fewer~~
- 14 ~~than 40 premises;~~
- 15 (2) ~~otherwise} sells cigarettes to consumers; or~~
- 16 ~~(3)}~~ (2) holds cigarettes for sale to consumers.
- 17 ~~(k)~~ (J) "Stamped cigarettes" means a package of cigarettes to which tobacco
- 18 tax stamps are affixed in the amount and manner required by § 12-304 of the Tax
- 19 General Article.
- 20 ~~(l)~~ (K) "Storage warehouse" means a storage facility in Maryland operated
- 21 for the purpose of storing unstamped cigarettes on behalf of a licensed cigarette
- 22 manufacturer.
- 23 ~~(m)~~ (L) (1) "Subwholesaler" means a person who:
- 24 (i) holds stamped cigarettes for sale to another person for resale; or
- 25 (ii) sells stamped cigarettes to another person for resale.
- 26 (2) "Subwholesaler" does not include a person who sells unstamped
- 27 cigarettes or holds unstamped cigarettes for sale.
- 28 ~~(n)~~ (M) "Unstamped cigarettes" means a package of cigarettes to which
- 29 tobacco tax stamps are not affixed in the amount and manner required by § 12-304 of
- 30 the Tax General Article.
- 31 ~~(o)~~ "Vending machine operator" means a person who:
- 32 (1) holds cigarettes for sale to consumers through vending machines on
- 33 40 or more premises; or

1 (2) sells cigarettes to consumers through vending machines on 40 or
2 more 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
11 stand operated under a trader's license issued to Blind Industries and Services of
12 Maryland.

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

15 (d) (1) A person licensed as a manufacturer, or person connected with the
16 business of a licensed manufacturer or related by ownership, may not at the same
17 time hold or have any financial interest in a wholesaler license or in any business of
18 a wholesaler.

19 (2) A person licensed as a wholesaler, or person connected with the
20 business of a licensed wholesaler or related by ownership, may not at the same time
21 hold or have any financial interest in a manufacturer license or in any business of a
22 manufacturer.

23 ~~16-203.~~

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

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

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

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

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

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

- 1 ~~[(e)]~~ ~~(D)~~ An applicant for a license to act as a wholesaler shall maintain:
- 2 (1) an established place of business, including warehouse facilities, for
3 the sale of cigarettes; and
- 4 (2) necessary equipment and vehicles for the storage and distribution of
5 cigarettes.

6 ~~16-204.~~

- 7 ~~(a)~~ An applicant for a license to act as a manufacturer shall:
- 8 (1) submit an application to the Comptroller on the form and containing
9 the information that the Comptroller requires; and
- 10 (2) pay to the Comptroller a fee of \$25.

- 11 ~~(b)~~ (1) An applicant for a license to act as a retailer shall:
- 12 (i) obtain the county license required under ~~§ 16-301~~ of this title;
- 13 (ii) submit to the clerk an application for each permanent or
14 temporary place of business located in the same enclosure and operated by the same
15 applicant; and
- 16 (iii) pay to the clerk a fee of \$30.

- 17 (2) The application shall:
- 18 (i) be made on the form that the clerk requires; and
- 19 (ii) contain the information that the Comptroller requires.

- 20 ~~(c)~~ An applicant for a license to act as a storage warehouse shall:
- 21 (1) submit an application to the Comptroller on the form and containing
22 the information that the Comptroller requires; and
- 23 (2) pay to the Comptroller a fee of \$25.

- 24 ~~(d)~~ An applicant for a license to act as a subwholesaler shall:
- 25 (1) submit an application to the Comptroller on the form and containing
26 the information that the Comptroller requires; and
- 27 (2) pay to the Comptroller a fee of:
- 28 (i) \$500 for a 1-year term; or
- 29 (ii) the amount that results when \$500 is prorated to the nearest
30 month, if the application is for less than a 1-year term.

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

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

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

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

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

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

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

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

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

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

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

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

23 ~~16-205.~~

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

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

29 ~~16-206.~~

30 ~~(a)~~ A manufacturer license authorizes the licensee to:

31 ~~(1)~~ sell unstamped cigarettes to a licensed cigarette wholesaler located in
32 Maryland;

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

4 (3) store unstamped cigarettes in a licensed cigarette storage warehouse
5 for subsequent shipment to licensed wholesalers, federal reservations, or persons out
6 of State; and

7 (4) upon approval of the Comptroller, act as an agent of a Maryland
8 licensed wholesaler for stamping and distribution of cigarettes.

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

10 (1) act as a retailer; and

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

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

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

16 (1) act as a subwholesaler; and

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

18 {(e)} A vending machine operator license authorizes the licensee to:

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

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

21 {(f)} (E) A wholesaler license authorizes the licensee to:

22 (1) act as a wholesaler;

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

24 (3) hold unstamped cigarettes;

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

27 (5) transport unstamped cigarettes in the State;

28 (6) sell unstamped cigarettes to another licensed wholesaler if the
29 Comptroller specifically authorizes; and

30 (7) upon approval of the Comptroller, designate a licensed manufacturer
31 to act as its agent for the stamping and distribution of cigarettes.

1 ~~16-207.~~

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

4 (3) pays to the issuing official:

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

7 ~~16-208.~~

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

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

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

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

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

22 ~~16-209.~~

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

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

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

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

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

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

1 ~~16-210.~~

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

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

7 (2) ~~fraudulently or deceptively uses a license;~~

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

10 (4) ~~buys cigarettes for resale:~~

11 (i) ~~in violation of a license; or~~

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

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

16 (1) ~~Title 12 of the Tax General Article, or regulations adopted under~~
17 ~~that title; or~~

18 (2) ~~Title 16 of the Business Regulation Article, or regulations adopted~~
19 ~~under that title.~~

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

23 (1) ~~1 year has passed since the license was revoked; and~~

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

26 ~~16-214.~~

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

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

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

3 ~~16-215.~~

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

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

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

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

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

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

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

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

21 ~~16-218.~~

22 (a) Each subwholesaler and each wholesaler:

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

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

26 (i) the invoice number;

27 (ii) the date of receipt;

28 (iii) the quantity received;

29 (iv) the brand; and

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

31 (3) for cigarette sales to retailers:

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

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

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

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

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

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

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

18 (c) Each subwholesaler and each wholesaler shall:

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

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

22 ~~§ 16-220.~~

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

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

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

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

32 ~~§ 16-221.~~

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

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

4 ~~6-301.~~

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
 9 vending machine].

10 ~~6-305.~~

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
 20 to the wholesaler otherwise not included in the invoice cost or the replacement cost;
 21 plus, for the wholesaler, the full face value of any applicable Maryland cigarette tax
 22 payable by 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
 24 of tobacco or tobacco mixed with another ingredient and wrapped in paper or in any
 25 other 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
 29 to 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
 31 percent 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.

1 (e) (1) "Cost to the wholesaler", subject to the special cost provisions of §
2 11-503 of this subtitle, means the basic cost of cigarettes to a wholesaler, plus a
3 markup to cover his cost of doing business, which cost of doing business:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 ~~[(m)]~~ ~~(L)~~ (1) "Wholesaler" means a person who purchases cigarettes directly
10 from a manufacturer.

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

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

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

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

22 11-503.

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

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

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

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

34 (i) First, add to his basic cost of cigarettes the wholesale markup of
35 5 percent provided for in § 11-501 (e) to cover the cost of doing business as a
36 wholesaler; and

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

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

7 (e) (1) A wholesaler who sells cigarettes to another wholesaler [~~or to a~~
8 ~~vending machine operator] is not required to include in his selling price the cost to~~
9 ~~the wholesaler. However, in the absence of satisfactory proof of a lesser cost for the~~
10 ~~service rendered, the wholesaler shall include in the selling price his basic cost of~~
11 ~~cigarettes, plus a charge of 1 percent of his basic cost of cigarettes.~~

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

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 1998.