

HOUSE BILL 163

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HB 271/97 - ENV

1999 Regular Session
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By: **Delegates Morhaim, Frush, Hubbard, D. Davis, Nathan-Pulliam,
Hammen, Zirkin, Finifter, Bobo, Goldwater, Bronrott, Billings, McKee,
Pendergrass, Kagan, Oaks, and McIntosh**

Introduced and read first time: January 28, 1999

Assigned to: Environmental Matters

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
8 machine operator; defining a certain term; and generally relating to the sale of
9 tobacco products by vending machines or other mechanical devices.

10 BY adding to

11 Article - Health - General
12 Section 24-1001 through 24-1003, inclusive, to be under the new subtitle
13 "Subtitle 10. Sale of Tobacco Products by Vending Machine"
14 Annotated Code of Maryland
15 (1996 Replacement Volume and 1998 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 and 1998 Supplement)

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 and 1998 Supplement)

26 BY repealing and reenacting, with amendments,

27 Article - Business Regulation

1 Section 16-101, 16-201 through 16-206, 16-207(c)(3)(ii), 16-208 through
2 16-210, 16-214, 16-215, 16-218, 16-301, and 16-305
3 Annotated Code of Maryland
4 (1998 Replacement Volume)

5 BY repealing
6 Article - Business Regulation
7 Section 16-220 and 16-221
8 Annotated Code of Maryland
9 (1998 Replacement Volume)

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 1998 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 10. SALE OF TOBACCO PRODUCTS BY VENDING MACHINE.

19 24-1001.

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

23 24-1002.

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

27 24-1003.

28 A PERSON WHO VIOLATES § 24-1002 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.

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

3 (3) "Distribute" means to:

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

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

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

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

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

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

15 (iii) Distribute to any minor a coupon redeemable for any tobacco
16 product.

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

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

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

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

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

31 405.

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

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

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

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

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

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

12 **Article - Business Regulation**

13 16-101.

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

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

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

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

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

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

25 16-201.

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

27 (b) "License" means:

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

30 (i) act as a manufacturer;

31 (ii) act as a subwholesaler;

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

1 (iv)] act as a wholesaler; or
2 [(v)] (IV) act as a storage warehouse; or
3 (2) a license issued by the clerk under § 16-205(b) of this subtitle to act
4 as a retailer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 [(3)] (2) holds cigarettes for sale to consumers.

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

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

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

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

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

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

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

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

16 (1) holds cigarettes for sale to consumers through vending machines on
17 40 or more premises; or

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

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

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

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

23 16-202.

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

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

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

32 (d) (1) A person licensed as a manufacturer, or person connected with the
33 business of a licensed manufacturer or related by ownership, may not at the same

1 time hold or have any financial interest in a wholesaler license or in any business of
2 a wholesaler.

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

7 16-203.

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

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

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

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

15 (2) necessary equipment and vehicles for the storage and distribution of
16 cigarettes.

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

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

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

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

25 16-204.

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

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

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

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

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

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

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

5 (2) The application shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 [(f) (E) An applicant for a license to act as a wholesaler 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 \$750.

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

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
5 fee 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
9 not apply to a license that is issued by the clerk or to a storage warehouse license
10 application.

11 16-205.

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

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

17 16-206.

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

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

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

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

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

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

30 (1) act as a retailer; and

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

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

- 1 (d) A subwholesaler license authorizes the licensee to:
- 2 (1) act as a subwholesaler; and
- 3 (2) buy stamped cigarettes from a wholesaler or another subwholesaler.
- 4 [(e) A vending machine operator license authorizes the licensee to:
- 5 (1) act as a vending machine operator; and
- 6 (2) buy stamped cigarettes from a subwholesaler or wholesaler.]
- 7 [(f) (E) A wholesaler license authorizes the licensee to:
- 8 (1) act as a wholesaler;
- 9 (2) buy unstamped cigarettes directly from a cigarette manufacturer;
- 10 (3) hold unstamped cigarettes;
- 11 (4) buy tobacco tax stamps as authorized by § 12-303 of the Tax -
- 12 General Article;
- 13 (5) transport unstamped cigarettes in the State;
- 14 (6) sell unstamped cigarettes to another licensed wholesaler if the
- 15 Comptroller specifically authorizes; and
- 16 (7) upon approval of the Comptroller, designate a licensed manufacturer
- 17 to act as its agent for the stamping and distribution of cigarettes.
- 18 16-207.
- 19 (c) Before a license issued under this subtitle expires, the licensee may renew
- 20 it for an additional 1-year term, if the licensee:
- 21 (3) pays to the issuing official:
- 22 (ii) if the license is issued by the Comptroller, the renewal fee
- 23 required under § [16-204(h)] 16-204(G) of this subtitle.
- 24 16-208.
- 25 (a) (1) A licensed retailer [or licensed vending machine operator] may not
- 26 assign the license.
- 27 (2) If a licensed subwholesaler or licensed wholesaler sells the licensee's
- 28 cigarette business and pays to the Comptroller a license assignment fee of \$10, the
- 29 licensee may assign the license to the buyer of the business.

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

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

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

10 16-209.

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

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

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

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

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

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

22 16-210.

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

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

28 (2) fraudulently or deceptively uses a license;

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

31 (4) buys cigarettes for resale:

32 (i) in violation of a license; or

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

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

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

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

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

10 (1) 1 year has passed since the license was revoked; and

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

13 16-214.

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

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

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

23 16-215.

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

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

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

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

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

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

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

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

7 16-218.

8 (a) Each subwholesaler and each wholesaler:

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

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

12 (i) the invoice number;

13 (ii) the date of receipt;

14 (iii) the quantity received;

15 (iv) the brand; and

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

17 (3) for cigarette sales to retailers:

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

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

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

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

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

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

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

4 (c) Each subwholesaler and each wholesaler shall:

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

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

8 [16-220.

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

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

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

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

18 [16-221.

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

21 (b) A person who willfully violates this section is guilty of a misdemeanor and,
22 on conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding
23 1 year or both.]

24 16-301.

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

27 (1)] each place of business[; and

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

30 16-305.

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

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

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

3 **Article - Commercial Law**

4 11-501.

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

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

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

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

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

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

23 (e) (1) "Cost to the wholesaler", subject to the special cost provisions of §
24 11-503 of this subtitle, means the basic cost of cigarettes to a wholesaler, plus a
25 markup to cover his cost of doing business, which cost of doing business:

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

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

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

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

35 (g) "Replacement cost" means the cost per unit for which the cigarettes could
36 have been bought by the wholesaler or retailer at any time within 30 days before the

1 date of sale by him if bought in the same quantity as his last purchase of the
2 cigarettes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 11-503.

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

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

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

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

20 (i) First, add to his basic cost of cigarettes the wholesale markup of
21 5 percent provided for in § 11-501 (e) to cover the cost of doing business as a
22 wholesaler; and

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

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

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

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

37 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
38 October 1, 1999.