

SENATE BILL 396

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1999 Regular Session  
9r1799

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By: ~~Senators Ruben and Forehand, Forehand, Kelley, Dorman, and Hooper~~  
Introduced and read first time: February 5, 1999  
Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: March 26, 1999

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Tobacco Products - ~~Sale by Vending Machines - Distribution of Tokens to~~**  
3 **Access by Minors**

4 FOR the purpose of prohibiting the sale or ~~offer for sale of tobacco products by~~  
5 ~~vending machines or other mechanical devices under certain circumstances;~~  
6 ~~prohibiting the distribution of vending machine tokens to minors; establishing a~~  
7 ~~certain penalty for a violation of this Act; providing for funding for the~~  
8 ~~conversion of certain vending machines; repealing certain provisions of law that~~  
9 ~~provide an exception to a penalty for a certain sale of a tobacco product by the~~  
10 ~~owner of a tobacco product vending machine; defining a certain term; and~~  
11 ~~generally relating to the sale of tobacco products by vending machines or other~~  
12 ~~mechanical devices~~ dispensing of a tobacco product by means of a vending  
13 machine; establishing certain exceptions; establishing a certain penalty;  
14 repealing a certain exemption from certain penalties for sales of tobacco  
15 products to minors for owners of and other persons exercising control over  
16 tobacco product vending machines; defining certain terms; providing for a  
17 delayed effective date; and generally relating to tobacco product vending  
18 machines and access to tobacco product vending machines by minors.

19 ~~BY adding to~~  
20 ~~Article Health General~~  
21 ~~Section 24-1001 through 24-1006, inclusive, to be under the new subtitle~~  
22 ~~"Subtitle 10. Sale of Tobacco Products by Vending Machines"~~  
23 ~~Annotated Code of Maryland~~  
24 ~~(1996 Replacement Volume and 1998 Supplement)~~

25 BY repealing and reenacting, with amendments,

1 Article 27 - Crimes and Punishments  
 2 Section ~~404~~ and 405  
 3 Annotated Code of Maryland  
 4 (1996 Replacement Volume and 1998 Supplement)

5 BY adding to  
 6 Article - Business Regulation  
 7 Section 16-3A-01 through 16-3A-03, inclusive, to be under the new subtitle  
 8 "Subtitle 3A. Placement of Tobacco Product Vending Machines"  
 9 Annotated Code of Maryland  
 10 (1998 Replacement Volume)

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

13 ~~Article - Health - General~~

14 ~~SUBTITLE 10. SALE OF TOBACCO PRODUCTS BY VENDING MACHINES.~~

15 ~~24-1001.~~

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

19 ~~24-1002.~~

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

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

26 ~~24-1003.~~

27 ~~A PERSON WHO VIOLATES § 24-1002 OF THIS SUBTITLE IS GUILTY OF A~~  
 28 ~~MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF \$500.~~

29 ~~24-1004.~~

30 ~~THE PROVISIONS OF § 24-1002 OF THIS SUBTITLE DO NOT APPLY TO A SALE OR~~  
 31 ~~OFFER FOR SALE OF A TOBACCO PRODUCT BY MEANS OF A VENDING MACHINE USED~~  
 32 ~~FOR DISPENSING TOBACCO PRODUCTS THAT ACCEPTS ONLY TOKENS.~~

1 ~~24-1005.~~

2 ~~THE COST OF CONVERTING EXISTING VENDING MACHINES FOR USE WITH~~  
3 ~~TOKENS SHALL BE FUNDED BY REVENUES CONSISTING OF FUNDS RECEIVED BY THE~~  
4 ~~STATE FROM ANY SOURCE AS A DIRECT OR INDIRECT RESULT OF ANY JUDGMENT~~  
5 ~~AGAINST OR SETTLEMENT WITH TOBACCO PRODUCT MANUFACTURERS, TOBACCO~~  
6 ~~RESEARCH ASSOCIATIONS, OR ANY OTHER PERSON IN THE TOBACCO INDUSTRY~~  
7 ~~RELATING TO LITIGATION, ADMINISTRATIVE PROCEEDINGS, OR ANY OTHER CLAIM~~  
8 ~~MADE OR PROSECUTED BY THE STATE TO RECOVER DAMAGES FOR VIOLATION OF~~  
9 ~~STATE LAW.~~

10 ~~24-1006.~~

11 ~~THE PROVISIONS OF § 24-1005 OF THIS SUBTITLE MAY NOT BE CONSTRUED TO~~  
12 ~~AFFECT THE GOVERNOR'S POWERS WITH RESPECT TO APPROPRIATIONS IN THE~~  
13 ~~ANNUAL BUDGET BILL.~~

14 **Article 27 - Crimes and Punishments**

15 ~~404.~~

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

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

19 (3) ~~"Distribute" means to:~~

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

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

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

24 (4) ~~"TOKEN" MEANS A COIN LIKE DISK OBJECT THAT IS MADE OF METAL~~  
25 ~~OR OTHER MATERIAL THAT MAY BE USED FOR THE SALE OF A TOBACCO PRODUCT BY~~  
26 ~~MEANS OF A VENDING MACHINE OR OTHER MECHANICAL DEVICE USED FOR~~  
27 ~~DISPENSING TOBACCO PRODUCTS.~~

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

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

34 (ii) ~~Distribute cigarette rolling papers to a minor; [or]~~

1 (iii) Distribute to any minor a coupon redeemable for any tobacco  
2 product; OR

3 (IV) ~~DISTRIBUTE ANY TOKENS TO A MINOR.~~

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

6 (i) Purchase for or sell to a minor any tobacco product; [or]

7 (ii) Deliver or sell to a minor cigarette rolling papers; OR

8 (III) ~~DISTRIBUTE ANY TOKENS TO A MINOR.~~

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

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

19 405.

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

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

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

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

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

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

Article - Business RegulationSUBTITLE 3A. PLACEMENT OF TOBACCO PRODUCT VENDING MACHINES.3 16-3A-01.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
5 INDICATED.

6 (B) (1) "OWNER" MEANS THE PERSON THAT OWNS OR OPERATES AN  
7 ESTABLISHMENT IN WHICH A VENDING MACHINE IS LOCATED.

8 (2) "OWNER" INCLUDES AN AGENT OR EMPLOYEE OF AN OWNER.

9 (C) "TOBACCO PRODUCT" MEANS ANY SUBSTANCE CONTAINING TOBACCO,  
10 INCLUDING CIGARETTES, CIGARS, SMOKING TOBACCO, SNUFF, OR SMOKELESS  
11 TOBACCO.

12 (D) "VENDING MACHINE" MEANS ANY MECHANICAL, ELECTRONIC, OR  
13 SIMILAR SELF-SERVICE DEVICE THAT ON INSERTION OF A COIN, COINS, TOKEN, OR  
14 OTHER SIMILAR MEANS DISPENSES A TOBACCO PRODUCT.

15 16-3A-02.

16 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OR (C) OF THIS SECTION, A  
17 PERSON MAY NOT SELL OR DISPENSE OR OFFER TO SELL OR DISPENSE A TOBACCO  
18 PRODUCT THROUGH A VENDING MACHINE IN ANY LOCATION IN THE STATE.

19 (B) AN OWNER OF AN ESTABLISHMENT MAY SELL OR DISPENSE OR OFFER TO  
20 SELL OR DISPENSE A TOBACCO PRODUCT THROUGH A VENDING MACHINE PLACED IN  
21 A LOCATION INSIDE THE ESTABLISHMENT IF THE ESTABLISHMENT IS NOT OPEN TO  
22 THE GENERAL PUBLIC OR IS AN ESTABLISHMENT THAT MINORS ARE PROHIBITED BY  
23 LAW FROM ENTERING.

24 (C) AN OWNER OF AN ESTABLISHMENT THAT IS OPEN TO THE GENERAL  
25 PUBLIC MAY SELL OR DISPENSE OR OFFER TO SELL OR DISPENSE A TOBACCO  
26 PRODUCT BY MEANS OF A VENDING MACHINE IF THE VENDING MACHINE:

27 (1) IS PLACED IN A LOCATION INSIDE THE ESTABLISHMENT THAT IS:

28 (I) AT A MINIMUM DISTANCE OF 10 FEET FROM ANY PUBLIC  
29 ENTRANCE TO THE ESTABLISHMENT; AND

30 (II) DIRECTLY VISIBLE TO THE OWNER OF THE ESTABLISHMENT OR  
31 AN EMPLOYEE OR AGENT OF THE OWNER OF THE ESTABLISHMENT; OR

32 (2) MAY ONLY BE OPERATED WITH A TOKEN, CARD, OR SIMILAR DEVICE  
33 THAT AN INDIVIDUAL CAN ONLY OBTAIN OR PURCHASE FROM AN EMPLOYEE OR  
34 AGENT OF THE OWNER.

1 16-3A-03.

2 A PERSON WHO VIOLATES THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND  
3 ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$100.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 ~~October 1, 1999~~ January 1, 2000.