

SENATE BILL 899

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2000 Regular Session
0lr2975
CF 0lr2976

By: **Senators Ruben and Forehand**
Introduced and read first time: March 6, 2000
Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Extinction of Cigarette Vending Machines Act**

3 FOR the purpose of prohibiting the possession, maintenance, or operation of a
4 vending machine that dispenses a tobacco product; establishing a certain
5 penalty; requiring the Comptroller of the Treasury to establish a certain
6 program; requiring the Cigarette Restitution Fund to fund a certain program;
7 repealing certain provisions of law that provide an exception to a penalty for a
8 certain sale of a tobacco product vending machine sale by the owner of a tobacco
9 product vending machine; repealing certain provisions of law relating to vending
10 machine operators; defining certain terms; making certain stylistic changes;
11 making this Act contingent on the taking effect of another Act; and generally
12 relating to the sale of tobacco products by vending machines or other mechanical
13 devices.

14 BY repealing and reenacting, without amendments,
15 Article 27 - Crimes and Punishments
16 Section 404
17 Annotated Code of Maryland
18 (1996 Replacement Volume and 1999 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article 27 - Crimes and Punishments
21 Section 405
22 Annotated Code of Maryland
23 (1996 Replacement Volume and 1999 Supplement)

24 BY adding to
25 Article 27 - Crimes and Punishments
26 Section 563A to be under the amended subheading "Tobacco Products - Sales by
27 Vending Machine"
28 Annotated Code of Maryland
29 (1996 Replacement Volume and 1999 Supplement)

1 BY repealing and reenacting, with amendments,
2 Article - Business Regulation
3 Section 16-101, 16-201 through 16-206, 16-207(c)(3)(ii), 16-208 through
4 16-210, 16-214, 16-215, 16-218, 16-301, and 16-305
5 Annotated Code of Maryland
6 (1998 Replacement Volume and 1999 Supplement)

7 BY repealing
8 Article - Business Regulation
9 Section 16-220 and 16-221
10 Annotated Code of Maryland
11 (1998 Replacement Volume and 1999 Supplement)

12 BY repealing and reenacting, with amendments,
13 Article - Commercial Law
14 Section 11-501 and 11-503
15 Annotated Code of Maryland
16 (1990 Replacement Volume and 1999 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article - State Finance and Procurement
19 Section 7-317(f)
20 Annotated Code of Maryland
21 (1995 Replacement Volume and 1999 Supplement)

22 Preamble

23 WHEREAS, The vast majority (90%) of adult smokers begin smoking before
24 age 18; and

25 WHEREAS, Those that initiate smoking by age 15 have a cancer rate 19 times
26 higher than non-smokers; and

27 WHEREAS, Each year in Maryland, at least 10.4 million packs of cigarettes
28 are sold illegally to underage youth; and

29 WHEREAS, For youths, one of the most commonly available opportunities for
30 the purchase of cigarettes is through vending machines; and

31 WHEREAS, Random unannounced inspections in 1998 by the Office of the
32 Comptroller showed that underage youth in the State were able to purchase
33 cigarettes from 70% of vending machines; and

34 WHEREAS, The removal of cigarette vending machines would dramatically
35 decrease smoking in minors in line with the State's smoking cessation priorities; and

1 WHEREAS, The General Assembly intends to prohibit cigarette vending
2 machines in the State of Maryland; now, therefore,

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

5 **Article 27 - Crimes and Punishments**

6 404.

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

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

10 (3) "Distribute" means to:

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

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

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

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

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

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

22 (iii) Distribute to any minor a coupon redeemable for any tobacco
23 product.

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

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

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

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

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

6 405.

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

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

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

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

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

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

21 [Tourist Information] TOBACCO PRODUCTS - SALES BY VENDING MACHINE

22 563A.

23 (A) (1) IN THIS SUBHEADING THE FOLLOWING WORDS HAVE THE
24 MEANINGS INDICATED.

25 (2) "TOBACCO PRODUCT" MEANS ANY SUBSTANCE CONTAINING
26 TOBACCO, INCLUDING CIGARETTES, CIGARS, SMOKING TOBACCO, SNUFF, OR
27 SMOKELESS TOBACCO.

28 (3) "VENDING MACHINE" MEANS A MECHANICAL, ELECTRONIC, OR
29 SIMILAR SELF-SERVICE DEVICE THAT IS OPERATED BY CURRENCY, TOKENS, OR AN
30 ELECTRONIC OR MAGNETIC CARD AND DISPENSES A SERVICE OR PRODUCT.

31 (B) A PERSON MAY NOT POSSESS, MAINTAIN, OR OPERATE A VENDING
32 MACHINE THAT DISPENSES A TOBACCO PRODUCT.

33 (C) (1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
34 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF \$500.

1 (2) A VENDING MACHINE THAT IS OPERATED IN VIOLATION OF THIS
2 SECTION SHALL BE SEALED, REMOVED, IMPOUNDED, OR DISABLED BY A LAW
3 ENFORCEMENT OFFICER HAVING JURISDICTION IN THE COUNTY OR MUNICIPAL
4 CORPORATION IN WHICH THE VIOLATION OCCURS.

5 (D) (1) THE COMPTROLLER SHALL ESTABLISH A PROGRAM TO PURCHASE
6 VENDING MACHINES THAT DISPENSED TOBACCO PRODUCTS IN THE STATE PRIOR TO
7 JULY 1, 1999 FROM THEIR OWNERS OR OPERATORS.

8 (2) THE COMPTROLLER SHALL PAY NO MORE THAN \$3,000 FOR EACH
9 VENDING MACHINE PURCHASED UNDER THIS SECTION.

10 (3) (I) THE COMPTROLLER SHALL ADOPT REGULATIONS FOR
11 VALUING A VENDING MACHINE THAT DISPENSES A TOBACCO PRODUCT.

12 (II) IN DEVELOPING THE REGULATIONS REQUIRED UNDER THIS
13 PARAGRAPH, THE COMPTROLLER SHALL INCLUDE THE CONDITION AND AGE OF THE
14 VENDING MACHINE AND THE ABILITY OF THE VENDING MACHINE TO BE
15 CONVERTED TO DISPENSE A SERVICE OR PRODUCT OTHER THAN A TOBACCO
16 PRODUCT.

17 (E) AS PROVIDED IN § 7-317 OF THE STATE FINANCE AND PROCUREMENT
18 ARTICLE, THE COMPTROLLER SHALL APPROPRIATE AND USE MONEY FROM THE
19 CIGARETTE RESTITUTION FUND TO PAY FOR THE PURCHASE OF VENDING MACHINES
20 UNDER THIS SECTION.

21 (F) (1) TO BE ELIGIBLE TO RECEIVE MONEY FOR THE PURCHASE OF A
22 VENDING MACHINE UNDER THIS SECTION, A PERSON SHALL PROVIDE THE
23 COMPTROLLER WITH:

24 (I) PROOF THAT THE PERSON WAS LICENSED:

25 1. BY THE COMPTROLLER AS A VENDING MACHINE
26 OPERATOR PRIOR TO JULY 1, 1999; OR

27 2. BY THE CLERK AS A RETAILER PRIOR TO JULY 1, 1999; AND

28 (II) PROOF THAT THE VENDING MACHINE WAS USED IN THE STATE
29 TO DISPENSE TOBACCO PRODUCTS PRIOR TO JULY 1, 1999.

30 (2) FOR THE PURPOSES OF MEETING THE REQUIREMENTS OF
31 PARAGRAPH (1)(II) OF THIS SUBSECTION, THE PERSON MAY SUBMIT TO THE
32 COMPTROLLER AN AFFIDAVIT FROM THE OWNER OR PROPRIETOR OF THE
33 ESTABLISHMENT WHERE THE VENDING MACHINE WAS LOCATED.

34 (G) ANY PERSON WHO FRAUDULENTLY SEEKS TO HAVE THE COMPTROLLER
35 PURCHASE A VENDING MACHINE IN VIOLATION OF THE PROVISIONS OF THIS
36 SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A
37 FINE OF NOT LESS THAN \$5,000.

Article - Business Regulation

1 16-101.

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

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

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

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

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

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

13 16-201.

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

15 (b) "License" means:

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

18 (i) act as a manufacturer;

19 (ii) act as a subwholesaler;

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

21 [(iv)] (III) 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
24 as a retailer.

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

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

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

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

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

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

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

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

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

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

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

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

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

22 [(3)] (2) holds cigarettes for sale to consumers.

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

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

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

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

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

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

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

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

5 (1) holds cigarettes for sale to consumers through vending machines on
6 40 or more premises; or

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

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

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

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

12 16-202.

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

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

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

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

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

29 16-203.

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

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

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

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

3 (2) necessary equipment and vehicles for the storage and distribution of
4 cigarettes.

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

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

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

11 (2) necessary equipment and vehicles for the storage and distribution of
12 cigarettes.

13 16-204.

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

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

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

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

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

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

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

24 (2) The application shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 16-205.

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

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

3 16-206.

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

5 (1) sell unstamped cigarettes to a licensed cigarette wholesaler located in
6 Maryland;

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

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

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

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

16 (1) act as a retailer; and

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

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

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

22 (1) act as a subwholesaler; and

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

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

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

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

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

28 (1) act as a wholesaler;

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

30 (3) hold unstamped cigarettes;

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

3 (5) transport unstamped cigarettes in the State;

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

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

8 16-207.

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

11 (3) pays to the issuing official:

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

14 16-208.

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

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

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

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

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

29 16-209.

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

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

1 (1) shall place each package of cigarettes in the machine so that when
2 the package is visible the tax stamps required by § 12-304 of the Tax - General
3 Article are 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
6 states 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
11 Comptroller may deny a license to an applicant, reprimand a licensee, or suspend or
12 revoke a license 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
23 Comptroller may suspend or revoke a license if the licensee violates:

24 (1) Title 12 of the Tax - General Article, or regulations adopted under
25 that 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
29 Comptroller shall deny a license to any applicant who has had a license revoked
30 under this section 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
33 comply with this title and any regulations adopted under this title.

1 16-214.

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

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

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

11 16-215.

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

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

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

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

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

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

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

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

29 16-218.

30 (a) Each subwholesaler and each wholesaler:

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

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

34 (i) the invoice number;

- 1 (ii) the date of receipt;
- 2 (iii) the quantity received;
- 3 (iv) the brand; and
- 4 (v) the name of the person from whom the cigarettes are received;

5 (3) for cigarette sales to retailers:

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

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

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

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

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

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

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

22 (c) Each subwholesaler and each wholesaler shall:

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

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

26 [16-220.

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

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

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

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

4 [16-221.

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

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

10 16-301.

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

13 (1) each place of business[; and

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

16 16-305.

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

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

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

21 **Article - Commercial Law**

22 11-501.

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

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

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

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

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

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

9 (e) (1) "Cost to the wholesaler", subject to the special cost provisions of §
10 11-503 of this subtitle, means the basic cost of cigarettes to a wholesaler, plus a
11 markup to cover his cost of doing business, which cost of doing business:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (2) "Wholesaler" includes a person, who, as a [sub-wholesaler]
20 SUBWHOLESALE:

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

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

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

31 11-503.

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

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

1 (v) enforcement of the laws regarding tobacco sales;

2 (vi) the purposes of the Maryland Health Care Foundation under
3 Title 20, Subtitle 5 of the Health - General Article;

4 (vii) primary health care in rural areas of the State and areas
5 targeted by tobacco manufacturers in marketing and promoting cigarette and tobacco
6 products;

7 (viii) prevention, treatment, and research concerning cancer, heart
8 disease, lung disease, tobacco product use, and tobacco control, including operating
9 costs and related capital projects;

10 (ix) substance abuse treatment and prevention programs; [and]

11 (X) THE PURCHASE OF VENDING MACHINES THAT DISPENSE
12 TOBACCO PRODUCTS AS PROVIDED UNDER THE EXTINCTION OF CIGARETTE
13 VENDING MACHINES ACT, CHAPTER ____ OF THE ACTS OF 2000; AND

14 [(x)] (XI) any other public purpose.

15 (2) The provisions of this subsection may not be construed to affect the
16 Governor's powers with respect to a request for an appropriation in the annual budget
17 bill.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 July 1, 2000, contingent on the taking effect of Chapter _____ (S.B. 271/H.B. 256) of
20 the Acts of the General Assembly of 2000, and if Chapter _____ does not become
21 effective, this Act shall be null and void without the necessity of further action by the
22 General Assembly.