
By: **Chairman, Environmental Matters Committee (Departmental - Health and Mental Hygiene) and Delegates Rosenberg, Frush, Morhaim, Mandel, and Menes**

Introduced and read first time: February 1, 2001

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Department of Health and Mental Hygiene - Comprehensive Tobacco**
3 **Control Program - Sale of Tobacco Products to Minors**

4 FOR the purpose of prohibiting certain retailers from selling or attempting to sell
5 tobacco products to minors; requiring the Department of Health and Mental
6 Hygiene to design, implement, and administer an inspection program to
7 eliminate the sale of tobacco products to minors; authorizing the Department to
8 designate certain entities to perform inspections; authorizing the Department
9 and its designees to recruit and employ minors to conduct inspections; requiring
10 the Department to issue retailers that sell or attempt to sell tobacco products to
11 minors a certain citation; specifying certain penalties for certain violations;
12 requiring the Department to establish a certain education program; requiring
13 certain retailers to take a certain education program; establishing certain
14 hearing and appeal procedures; requiring the Secretary of Health and Mental
15 Hygiene to send a certain notice to the Comptroller of the State; requiring the
16 Comptroller to suspend certain licensees; defining certain terms; and generally
17 relating to the selling or attempted selling of tobacco products to minors.

18 BY adding to
19 Article - Health - General
20 Section 8-901 through 8-909, inclusive, to be under the new subtitle "Subtitle 9.
21 Comprehensive Control of Sale of Tobacco Products to Minors"
22 Annotated Code of Maryland
23 (2000 Replacement Volume)

24 BY repealing and reenacting, with amendments,
25 Article - Business Regulation
26 Section 16-210
27 Annotated Code of Maryland
28 (As enacted by Chapter 220 of the Acts of the General Assembly of 2000)

29 BY repealing and reenacting, with amendments,

1 Article - Business Regulation
2 Section 16-212(e)
3 Annotated Code of Maryland
4 (1998 Replacement Volume and 2000 Supplement)

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

7 **Article - Health - General**

8 SUBTITLE 9. COMPREHENSIVE CONTROL OF SALE OF TOBACCO PRODUCTS TO
9 MINORS.

10 8-901.

11 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
12 INDICATED.

13 (B) (1) "RETAILER" MEANS A PERSON THAT:

14 (I) SELLS TOBACCO PRODUCTS TO CONSUMERS THROUGH
15 VENDING MACHINES ON FEWER THAN 40 PREMISES;

16 (II) OTHERWISE SELLS TOBACCO PRODUCTS TO CONSUMERS; OR

17 (III) HOLDS TOBACCO PRODUCTS FOR SALE TO CONSUMERS.

18 (2) "RETAILER" INCLUDES:

19 (I) A LICENSED VENDING MACHINE OPERATOR AS DEFINED IN §
20 16-201(F) OF THE BUSINESS REGULATION ARTICLE;

21 (II) A LICENSED RETAILER AS DEFINED IN § 16-201(D) OF THE
22 BUSINESS REGULATION ARTICLE; AND

23 (III) ANY ENTITY HOLDING A COUNTY LICENSE AS DESCRIBED IN §
24 16-301 OF THE BUSINESS REGULATION ARTICLE.

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

28 (D) "VIOLATION" HAS THE MEANING INDICATED IN ARTICLE 27, § 405(B) OF
29 THE CODE.

30 8-902.

31 A RETAILER MAY NOT SELL OR ATTEMPT TO SELL TOBACCO PRODUCTS TO A
32 MINOR.

1 8-903.

2 (A) THE DEPARTMENT SHALL DESIGN, IMPLEMENT, AND ADMINISTER AN
3 INSPECTION PROGRAM TO ELIMINATE THE SALE OF TOBACCO PRODUCTS TO
4 MINORS.

5 (B) (1) IN ADMINISTERING THE INSPECTION PROGRAM, THE DEPARTMENT
6 SHALL CONDUCT ON-SITE INSPECTIONS OF RETAILERS TO DETERMINE WHETHER
7 THEY ARE SELLING OR ATTEMPTING TO SELL TOBACCO PRODUCTS TO MINORS.

8 (2) THE DEPARTMENT MAY DESIGNATE LOCAL HEALTH DEPARTMENTS,
9 INCLUDING LOCAL HEALTH DEPARTMENTS ACTING UNDER § 13-1006(C)(3) OF THIS
10 ARTICLE, LAW ENFORCEMENT AGENCIES, OR ANY OTHER ENTITY THE DEPARTMENT
11 DEEMS APPROPRIATE TO PERFORM INSPECTIONS OF RETAILERS, PROVIDED THAT
12 THE ENTITIES OPERATE AN INSPECTION PROGRAM THAT MEETS THE STANDARDS
13 SET BY THE DEPARTMENT.

14 (C) (1) IN CONDUCTING ON-SITE INSPECTIONS, THE DEPARTMENT OR ITS
15 DESIGNEE MAY RECRUIT AND EMPLOY MINORS UNDER AGE 18 TO ENTER THE
16 RETAIL ESTABLISHMENTS AND ATTEMPT TO PURCHASE TOBACCO PRODUCTS.

17 (2) IF THE DEPARTMENT OR ITS DESIGNEE CONDUCTS AN INSPECTION
18 THROUGH THE USE OF A MINOR, A REPRESENTATIVE OF THE DEPARTMENT OR ITS
19 DESIGNEE SHALL MONITOR THE INSPECTION PROCESS.

20 (D) PARTICIPATION BY A MINOR EMPLOYED BY THE DEPARTMENT OR ITS
21 DESIGNEE FOR THE ON-SITE INSPECTION PROCESS MAY NOT CONSTITUTE A
22 VIOLATION OF ARTICLE 27, § 405(A) OF THE CODE OR OF ANY OTHER LAW OR
23 REGULATION, CRIMINAL OR CIVIL, IN ANY JURISDICTION PROHIBITING THE
24 PURCHASE OF ANY TOBACCO PRODUCT BY A MINOR.

25 (E) (1) IF THE RETAILER SELLS OR ATTEMPTS TO SELL A TOBACCO
26 PRODUCT TO A MINOR, THE REPRESENTATIVE FROM THE DEPARTMENT WHO
27 MONITORED THE INSPECTION SHALL ISSUE A CITATION TO THE RETAILER STATING
28 THAT THE RETAILER VIOLATED THE LAW AGAINST SELLING TOBACCO PRODUCTS TO
29 MINORS.

30 (2) THE DEPARTMENT SHALL ISSUE THE RETAILER THE APPROPRIATE
31 PENALTY IN ACCORDANCE WITH § 8-904 OF THIS SUBTITLE.

32 (3) THE DEPARTMENT OR ITS DESIGNEE SHALL CONDUCT AN
33 ADDITIONAL INSPECTION OF THE RETAILER WITHIN 90 DAYS OF ANY VIOLATION OR
34 ATTEMPTED VIOLATION OF THIS SUBTITLE.

35 (F) THE DEPARTMENT MAY ADOPT REGULATIONS TO CARRY OUT THE
36 PROVISIONS OF THIS SUBTITLE, INCLUDING PROCEDURES FOR CONDUCTING
37 INSPECTIONS AND GUIDELINES FOR DETERMINING WHICH RETAILERS TO INSPECT
38 AND WHEN TO CONDUCT THE INSPECTIONS.

1 8-904.

2 (A) A RETAILER WHO SELLS OR ATTEMPTS TO SELL OR OTHERWISE
3 DISTRIBUTES TOBACCO PRODUCTS TO A MINOR IS SUBJECT TO THE FOLLOWING
4 CIVIL PENALTIES:

5 (1) FOR A FIRST VIOLATION, A FINE OF NOT MORE THAN \$1,000;

6 (2) FOR A SECOND VIOLATION OCCURRING WITHIN A 2-YEAR PERIOD OF
7 THE FIRST VIOLATION, A FINE OF NOT MORE THAN \$2,000 OR THE SUSPENSION OF
8 THE RETAILER'S LICENSE TO SELL CIGARETTES THAT IS NOT LESS THAN 10 DAYS OR
9 MORE THAN 30 DAYS, OR BOTH;

10 (3) FOR A THIRD VIOLATION OCCURRING WITHIN A 2-YEAR PERIOD OF
11 THE PRIOR VIOLATION, A FINE OF NOT MORE THAN \$3,000 OR THE SUSPENSION OF
12 THE RETAILER'S LICENSE TO SELL CIGARETTES THAT IS NOT LESS THAN 30 DAYS OR
13 MORE THAN 6 MONTHS, OR BOTH; AND

14 (4) FOR ANY SUBSEQUENT VIOLATIONS OCCURRING WITHIN A 3-YEAR
15 PERIOD OF THE PRIOR VIOLATION, A FINE OF NOT MORE THAN \$4,000 OR THE
16 SUSPENSION OF THE RETAILER'S LICENSE FOR 1 YEAR, OR BOTH.

17 (B) IN ADDITION TO THE PENALTIES IN SUBSECTION (A) OF THIS SECTION, A
18 RETAILER WHO SELLS OR ATTEMPTS TO SELL TOBACCO PRODUCTS TO A MINOR
19 SHALL BE SUBJECT TO THE EDUCATION PROGRAM DEVELOPED BY THE
20 DEPARTMENT UNDER § 8-908 OF THIS SUBTITLE.

21 (C) IN A PROCEEDING FOR A VIOLATION OF THIS SUBTITLE, IT SHALL BE AN
22 AFFIRMATIVE DEFENSE THAT THE RETAILER EXAMINED THE PURCHASER'S OR
23 RECIPIENT'S DRIVER'S LICENSE OR OTHER VALID IDENTIFICATION ISSUED BY AN
24 EMPLOYER, GOVERNMENTAL ENTITY, OR INSTITUTION OF HIGHER EDUCATION THAT
25 POSITIVELY IDENTIFIED THE PURCHASER OR RECIPIENT AS AT LEAST 18 YEARS OLD.

26 (D) (1) A RETAILER IS NOT SUBJECT TO PROSECUTION UNDER ARTICLE 27, §
27 404 OR § 405 OF THE CODE AND IS NOT LIABLE FOR ANY CIVIL PENALTY UNDER TITLE
28 16 OF THE BUSINESS REGULATION ARTICLE FOR THE SAME VIOLATION FOR WHICH
29 THE RETAILER IS PENALIZED UNDER THIS SECTION.

30 (2) A RETAILER IS SUBJECT TO PROSECUTION UNDER ARTICLE 27, §§ 404
31 AND 405 OF THE CODE AND IS LIABLE FOR A CIVIL PENALTY UNDER TITLE 16 OF THE
32 BUSINESS REGULATION ARTICLE FOR ANY CONDUCT FOR WHICH THE RETAILER IS
33 NOT PENALIZED UNDER THIS SECTION.

34 8-905.

35 (A) EXCEPT AS OTHERWISE PROVIDED IN § 10-226 OF THE STATE
36 GOVERNMENT ARTICLE, BEFORE THE SECRETARY TAKES ANY FINAL ACTION UNDER
37 § 8-904 OF THIS SUBTITLE, THE SECRETARY SHALL GIVE THE PERSON AGAINST
38 WHOM THE ACTION IS CONTEMPLATED AN OPPORTUNITY FOR A HEARING BEFORE
39 THE SECRETARY OR THE SECRETARY'S DESIGNEE.

1 (B) THE SECRETARY SHALL GIVE NOTICE AND HOLD THE HEARING IN
2 ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

3 (C) THE SECRETARY MAY ADMINISTER OATHS IN A PROCEEDING UNDER THIS
4 SECTION.

5 (D) THE PERSON AGAINST WHOM THE ACTION IS CONTEMPLATED MAY BE
6 REPRESENTED AT THE HEARING BY COUNSEL.

7 (E) IF, AFTER DUE NOTICE, THE PERSON AGAINST WHOM THE ACTION IS
8 CONTEMPLATED DOES NOT APPEAR, THE SECRETARY MAY HEAR AND DETERMINE
9 THE MATTER.

10 (F) IN ACCORDANCE WITH § 10-205 OF THE STATE GOVERNMENT ARTICLE,
11 THE SECRETARY MAY DELEGATE HIS OR HER AUTHORITY IN THIS SECTION TO THE
12 OFFICE OF ADMINISTRATIVE HEARINGS TO ISSUE EITHER A PROPOSED OR FINAL
13 ORDER.

14 8-906.

15 (A) (1) IF THE SECRETARY ISSUES AN ORDER THAT SUSPENDS A RETAILER'S
16 LICENSE, THE SECRETARY SHALL IMMEDIATELY PROVIDE WRITTEN NOTICE OF THE
17 ORDER TO THE COMPTROLLER.

18 (2) UPON RECEIPT OF THE WRITTEN NOTICE OF THE ORDER FROM THE
19 SECRETARY, THE COMPTROLLER SHALL IMMEDIATELY SUSPEND THE RETAILER'S
20 LICENSE IN ACCORDANCE WITH THE SECRETARY'S ORDER.

21 (B) (1) THE COMPTROLLER SHALL GIVE THE LICENSEE NOTICE OF THE
22 SUSPENSION.

23 (2) THE SUSPENSION MAY NOT TAKE EFFECT UNTIL AT LEAST 5
24 BUSINESS DAYS FOLLOWING NOTICE OF THE SUSPENSION.

25 8-907.

26 (A) ANY PERSON AGGRIEVED BY A DECISION OF THE SECRETARY OR THE
27 OFFICE OF ADMINISTRATIVE HEARINGS MAY APPEAL THE DECISION TO THE CIRCUIT
28 COURT WHERE THE VIOLATION OCCURRED WITHIN 30 DAYS OF THE DECISION.

29 (B) THE CIRCUIT COURT SHALL HEAR THE CASE ON THE RECORD CREATED
30 BEFORE THE SECRETARY.

31 8-908.

32 (A) THE DEPARTMENT SHALL DEVELOP AN EDUCATION PROGRAM THAT
33 INCLUDES A REVIEW OF ALL LAWS THAT PROHIBIT OR OTHERWISE RESTRICT THE
34 SALE OF TOBACCO PRODUCTS TO MINORS.

1 (B) THE DEPARTMENT SHALL OFFER THE EDUCATION PROGRAM TO ALL
2 RETAILERS THAT HAVE VIOLATED THIS SUBTITLE AND TO ALL RETAILERS THAT
3 VOLUNTARILY REQUEST TO TAKE THE EDUCATION PROGRAM.

4 (C) THE DEPARTMENT SHALL OFFER THE EDUCATION PROGRAM ANNUALLY
5 IN EACH OF THE FOLLOWING AREAS OF THE STATE: WESTERN MARYLAND, CENTRAL
6 MARYLAND, SOUTHERN MARYLAND, AND THE EASTERN SHORE.

7 8-909.

8 THIS SUBTITLE MAY NOT BE CONSTRUED TO PREEMPT OR PREVAIL OVER ANY
9 LOCAL ORDINANCE, RESOLUTION, OR RULE THAT IS MORE STRINGENT THAN THIS
10 SUBTITLE.

11 **Article - Business Regulation**

12 16-210.

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

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

18 (2) fraudulently or deceptively uses a license;

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

21 (4) fails to comply with the provisions of Title 11, Subtitle 5A of the
22 Commercial Law Article;

23 (5) buys cigarettes for resale:

24 (i) in violation of a license; or

25 (ii) from a person who is not a cigarette manufacturer, licensed
26 subwholesaler, licensed vending machine operator, or licensed wholesaler;

27 (6) is convicted, under the laws of the United States or of any other state,
28 of:

29 (i) a felony; or

30 (ii) a misdemeanor that is a crime of moral turpitude and is directly
31 related to the fitness and qualification of the applicant or licensee; or

32 (7) has not paid a tax due before October 1 of the year after the tax
33 became due.

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) THE COMPTROLLER SHALL SUSPEND A LICENSE UPON RECEIPT OF THE
8 WRITTEN NOTICE OF THE ORDER FROM THE SECRETARY UNDER § 8-906 OF THE
9 HEALTH - GENERAL ARTICLE.

10 [(c)] (D) Subject to the hearing provisions of § 16-211 of this subtitle, the
11 Comptroller shall deny a license to any applicant who has had a license revoked
12 under this section until:

13 (1) 1 year has passed since the license was revoked; and

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

16 [(d)] (E) Prior to the issuance or renewal of any license, the Comptroller shall
17 conduct an investigation with regard to:

18 (1) the applicant;

19 (2) the business to be operated; and

20 (3) the facts set forth in the application.

21 16-212.

22 (e) (1) Except for a violation of Article 27, § 404 of the Code OR § 8-904 OF
23 THE HEALTH - GENERAL ARTICLE, whenever any license issued under the provisions
24 of this subtitle is suspended or revoked by the Comptroller, the licensee may, before
25 the effective date of the suspension or revocation, petition the Comptroller for
26 permission to make an offer of compromise consisting of a sum of money in lieu of
27 serving the suspension or revocation.

28 (2) Money paid in lieu of suspension or revocation shall be paid into the
29 General Fund of the State.

30 (3) An offer of compromise shall not exceed \$2,000 in the case of retail
31 licensees, and shall not exceed \$50,000 for other licensees.

32 (4) The Comptroller may accept the offer of compromise if:

33 (i) the public welfare and morals would not be impaired by
34 allowing the licensee to operate during the period set for the suspension or revocation;
35 and

1 (ii) the payment of the sum of money will achieve the desired
2 disciplinary purposes.

3 (5) The Comptroller may promulgate rules and regulations necessary to
4 carry out the purposes of this subsection.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2001.