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

Introduced and read first time: February 13, 2002

Assigned to: Rules and Executive Nominations

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 tobacco products to
5 minors; requiring the Department of Health and Mental Hygiene to design,
6 implement, and administer a compliance check program to eliminate the sale of
7 tobacco products to minors; authorizing the Department to designate certain
8 entities to perform compliance checks; authorizing the Department and its
9 designees to retain minors to conduct compliance checks; requiring the
10 Department to issue retailers that sell tobacco products to minors a certain
11 citation; specifying certain penalties for certain violations; requiring the
12 Department to establish and offer to certain retailers a certain education
13 program; establishing certain hearing and appeal procedures; requiring the
14 Secretary of Health and Mental Hygiene to send a certain notice to the
15 Comptroller; requiring the Comptroller to suspend certain licensees; providing
16 for the construction of this Act; defining certain terms; and generally relating to
17 the 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 and 2001 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article - Business Regulation
26 Section 16-210, 16-212(e), and 16-306
27 Annotated Code of Maryland
28 (1998 Replacement Volume and 2001 Supplement)

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

1 **Article - Health - General**

2 SUBTITLE 9. COMPREHENSIVE CONTROL OF SALE OF TOBACCO PRODUCTS TO
3 MINORS.

4 8-901.

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

7 (B) "LAW ENFORCEMENT AGENCY" MEANS AN ENTITY THAT EMPLOYS LAW
8 ENFORCEMENT PERSONNEL AS DEFINED IN ARTICLE 27 § 36F(I).

9 (C) (1) "RETAILER" MEANS A PERSON THAT:

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

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

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

14 (2) "RETAILER" INCLUDES:

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

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

19 (III) ANY ENTITY HOLDING A COUNTY LICENSE AS DESCRIBED IN §
20 16-301 OF THE BUSINESS REGULATION ARTICLE.

21 (3) "RETAILER" DOES NOT INCLUDE A CASHIER OR CLERK WHO SELLS
22 OR ATTEMPTS TO SELL TOBACCO PRODUCTS TO MINORS.

23 (D) "TOBACCO PRODUCT" MEANS ANY SUBSTANCE CONTAINING TOBACCO,
24 INCLUDING CIGARETTES, CIGARS, SMOKING TOBACCO, SNUFF, OR SMOKELESS
25 TOBACCO.

26 (E) "VIOLATION" HAS THE MEANING INDICATED IN ARTICLE 27, § 405(B) OF
27 THE CODE.

28 8-902.

29 A RETAILER MAY NOT SELL TOBACCO PRODUCTS TO A MINOR.

1 8-903.

2 (A) THE DEPARTMENT, IN CONSULTATION WITH THE OFFICE OF THE
3 ATTORNEY GENERAL, SHALL DESIGN, IMPLEMENT, AND ADMINISTER A COMPLIANCE
4 CHECK PROGRAM TO ELIMINATE THE SALE OF TOBACCO PRODUCTS TO MINORS.

5 (B) (1) IN ADMINISTERING THE COMPLIANCE CHECK PROGRAM, THE
6 DEPARTMENT SHALL CONDUCT COMPLIANCE CHECKS OF RETAILERS TO
7 DETERMINE WHETHER THEY ARE SELLING TOBACCO PRODUCTS TO MINORS.

8 (2) THE DEPARTMENT MAY DESIGNATE ANY OFFICE OF LOCAL
9 GOVERNMENT, INCLUDING LOCAL HEALTH DEPARTMENTS ACTING UNDER §
10 13-1006(C)(3) OF THIS ARTICLE, OR LAW ENFORCEMENT AGENCIES TO PERFORM
11 COMPLIANCE CHECKS OF RETAILERS, PROVIDED THAT THE ENTITIES OPERATE A
12 COMPLIANCE CHECK PROGRAM THAT MEETS THE STANDARDS SET BY THE
13 DEPARTMENT.

14 (C) (1) IN CONDUCTING COMPLIANCE CHECKS, THE DEPARTMENT OR ITS
15 DESIGNEE MAY RECRUIT MINORS TO ENTER THE RETAIL ESTABLISHMENTS TO
16 PURCHASE TOBACCO PRODUCTS.

17 (2) IF THE DEPARTMENT OR ITS DESIGNEE CONDUCTS A COMPLIANCE
18 CHECK THROUGH THE USE OF A MINOR, A REPRESENTATIVE OF THE DEPARTMENT
19 OR ITS DESIGNEE SHALL BE ACCESSIBLE TO OR ON SITE TO SUPERVISE THE
20 COMPLIANCE CHECK PROCESS.

21 (D) PARTICIPATION BY A MINOR RETAINED BY THE DEPARTMENT OR ITS
22 DESIGNEE FOR THE COMPLIANCE CHECK PROCESS DOES NOT CONSTITUTE A
23 VIOLATION OF § 10-107(F) OF THE CRIMINAL LAW ARTICLE OR OF ANY OTHER LAW OR
24 REGULATION, CRIMINAL OR CIVIL, IN ANY JURISDICTION PROHIBITING THE
25 PURCHASE OF ANY TOBACCO PRODUCT BY A MINOR.

26 (E) (1) IF DURING THE COMPLIANCE CHECK A RETAILER SELLS OR
27 ATTEMPTS TO SELL A TOBACCO PRODUCT TO A MINOR, THE REPRESENTATIVE FROM
28 THE DEPARTMENT OR THE DEPARTMENT'S DESIGNEE WHO SUPERVISED THE
29 COMPLIANCE CHECK SHALL ISSUE A CITATION TO THE RETAILER STATING THAT THE
30 RETAILER VIOLATED THE LAW AGAINST SELLING TOBACCO PRODUCTS TO MINORS.

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

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

36 (F) THE DEPARTMENT MAY ADOPT REGULATIONS TO CARRY OUT THE
37 PROVISIONS OF THIS SUBTITLE, INCLUDING:

38 (1) PROCEDURES FOR CONDUCTING COMPLIANCE CHECKS;

- 1 (2) GUIDELINES FOR DETERMINING WHICH RETAILERS TO CHECK; AND
2 (3) WHEN TO CONDUCT THE COMPLIANCE CHECKS.

3 8-904.

4 (A) A RETAILER WHO SELLS TOBACCO PRODUCTS TO A MINOR IS SUBJECT TO
5 THE FOLLOWING CIVIL PENALTIES:

- 6 (1) FOR A FIRST VIOLATION, A FINE BETWEEN \$500 AND \$1,000;
7 (2) FOR A SECOND VIOLATION OCCURRING WITHIN A 2-YEAR PERIOD OF
8 THE FIRST VIOLATION, A FINE BETWEEN \$1,000 AND \$2,000 OR THE SUSPENSION OF
9 THE RETAILER'S LICENSE TO SELL CIGARETTES THAT IS NOT LESS THAN 10 DAYS
10 NOR MORE THAN 30 DAYS, OR BOTH;
11 (3) FOR A THIRD VIOLATION OCCURRING WITHIN A 2-YEAR PERIOD OF
12 THE PRIOR VIOLATION, A FINE BETWEEN \$2,000 AND \$3,000 OR THE SUSPENSION OF
13 THE RETAILER'S LICENSE TO SELL CIGARETTES THAT IS NOT LESS THAN 30 DAYS
14 NOR MORE THAN 6 MONTHS, OR BOTH; AND
15 (4) FOR ANY SUBSEQUENT VIOLATIONS OCCURRING WITHIN A 3-YEAR
16 PERIOD OF THE PRIOR VIOLATION, A FINE BETWEEN \$3,000 AND \$4,000 OR THE
17 SUSPENSION OF THE RETAILER'S LICENSE FOR 1 YEAR.

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

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

27 (D) (1) A RETAILER IS NOT SUBJECT TO PROSECUTION UNDER §§ 10-101 AND
28 10-107 OF THE CRIMINAL LAW ARTICLE AND IS NOT LIABLE FOR ANY CIVIL PENALTY
29 UNDER TITLE 16 OF THE BUSINESS REGULATION ARTICLE FOR THE SAME VIOLATION
30 FOR WHICH THE RETAILER IS PENALIZED UNDER THIS SECTION.

31 (2) A RETAILER IS SUBJECT TO PROSECUTION UNDER §§ 10-101 AND
32 10-107 OF THE CRIMINAL LAW ARTICLE AND IS LIABLE FOR A CIVIL PENALTY UNDER
33 TITLE 16 OF THE BUSINESS REGULATION ARTICLE FOR ANY CONDUCT FOR WHICH
34 THE RETAILER IS NOT PENALIZED UNDER THIS SECTION.

35 (3) NOTHING IN THIS SUBTITLE SHALL PREEMPT OR LIMIT THE
36 COMPTROLLER'S AUTHORITY TO SUSPEND OR REVOKE A LICENSE UNDER TITLE 16
37 OF THE BUSINESS REGULATION ARTICLE.

1 (E) (1) IN THE CASE OF A JURISDICTION WITH AN ENFORCEMENT PROGRAM
2 WHICH IS NOT PREEMPTED BY THIS SUBTITLE, THE DEPARTMENT ON THE
3 RECOMMENDATION OF THE JURISDICTION MAY ORDER THE IMPOSITION OF
4 APPROPRIATE CIVIL PENALTIES IN ACCORDANCE WITH THIS SECTION.

5 (2) A VIOLATION OF A LOCAL ORDINANCE, RESOLUTION, OR RULE NOT
6 PREEMPTED BY THIS SUBTITLE CONSTITUTES A VIOLATION OF THIS SUBTITLE FOR
7 PURPOSES OF DETERMINING THE APPROPRIATE PENALTY UNDER THIS SECTION.

8 8-905.

9 (A) EXCEPT AS OTHERWISE PROVIDED IN § 10-226 OF THE STATE
10 GOVERNMENT ARTICLE, BEFORE THE SECRETARY TAKES ANY FINAL ACTION UNDER
11 § 8-904 OF THIS SUBTITLE, THE SECRETARY OR THE SECRETARY'S DESIGNEE SHALL
12 GIVE THE RETAILER AGAINST WHOM THE ACTION IS CONTEMPLATED AN
13 OPPORTUNITY FOR A HEARING BEFORE THE SECRETARY OR THE SECRETARY'S
14 DESIGNEE.

15 (B) THE SECRETARY OR THE SECRETARY'S DESIGNEE SHALL GIVE NOTICE
16 AND HOLD THE HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE
17 GOVERNMENT ARTICLE.

18 (C) THE SECRETARY OR THE SECRETARY'S DESIGNEE MAY ADMINISTER
19 OATHS IN A PROCEEDING UNDER THIS SECTION.

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

22 (E) IF, AFTER DUE NOTICE HAS BEEN GIVEN, THE PERSON AGAINST WHOM
23 THE ACTION IS CONTEMPLATED DOES NOT APPEAR, THE SECRETARY OR THE
24 SECRETARY'S DESIGNEE MAY HEAR AND DETERMINE THE MATTER.

25 (F) IN ACCORDANCE WITH § 10-205 OF THE STATE GOVERNMENT ARTICLE,
26 THE SECRETARY MAY DELEGATE THE SECRETARY'S AUTHORITY IN THIS SECTION TO
27 THE OFFICE OF ADMINISTRATIVE HEARINGS TO ISSUE EITHER A PROPOSED OR
28 FINAL ORDER.

29 8-906.

30 (A) IF THE SECRETARY OR THE SECRETARY'S DESIGNEE ISSUES AN ORDER
31 THAT SUSPENDS A RETAILER'S LICENSE, THE SECRETARY SHALL IMMEDIATELY
32 PROVIDE WRITTEN NOTICE OF THE ORDER TO THE COMPTROLLER.

33 (B) UPON RECEIPT OF THE WRITTEN NOTICE OF THE ORDER FROM THE
34 SECRETARY, THE COMPTROLLER SHALL IMMEDIATELY SUSPEND OR REVOKE THE
35 RETAILER'S LICENSE IN ACCORDANCE WITH THE SECRETARY'S ORDER.

1 8-907.

2 (A) ANY PERSON AGGRIEVED BY A DECISION OF THE SECRETARY OR THE
3 OFFICE OF ADMINISTRATIVE HEARINGS MAY APPEAL THE DECISION TO THE CIRCUIT
4 COURT WHERE THE VIOLATION OCCURRED, WITHIN 30 DAYS OF THE DECISION.

5 (B) THE CIRCUIT COURT SHALL HEAR THE CASE ON THE RECORD CREATED
6 BEFORE THE SECRETARY PURSUANT TO TITLE 10, SUBTITLE 2 OF THE STATE
7 GOVERNMENT ARTICLE.

8 8-908.

9 (A) THE DEPARTMENT, IN CONSULTATION WITH THE OFFICE OF THE
10 ATTORNEY GENERAL, SHALL DEVELOP AN EDUCATION PROGRAM, WHICH INCLUDES
11 A REVIEW OF ALL LAWS THAT PROHIBIT OR OTHERWISE RESTRICT THE SALE OF
12 TOBACCO PRODUCTS TO MINORS.

13 (B) THE DEPARTMENT SHALL OFFER THE EDUCATION PROGRAM TO ALL
14 RETAILERS THAT HAVE VIOLATED THIS SUBTITLE AND TO ALL RETAILERS THAT
15 VOLUNTARILY REQUEST TO TAKE THE EDUCATION PROGRAM.

16 (C) THE DEPARTMENT SHALL OFFER THE EDUCATION PROGRAM AT LEAST
17 ONCE IN EACH CALENDAR YEAR IN EACH OF THE FOLLOWING AREAS OF THE STATE:

- 18 (1) CENTRAL MARYLAND;
- 19 (2) THE EASTERN SHORE;
- 20 (3) SOUTHERN MARYLAND; AND
- 21 (4) WESTERN MARYLAND.

22 8-909.

23 THIS SUBTITLE MAY NOT BE CONSTRUED TO PREEMPT ANY ADDITIONAL
24 EFFORT BY A COUNTY OR A LOCAL GOVERNMENT TO ENFORCE STATE AND LOCAL
25 LAWS PROHIBITING THE ILLEGAL SALE OF TOBACCO PRODUCTS TO MINORS.

26 **Article - Business Regulation**

27 16-210.

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

- 31 (1) fraudulently or deceptively obtains or attempts to obtain a license for
32 the applicant or licensee or for another person;
- 33 (2) fraudulently or deceptively uses a license;

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

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

5 (5) buys cigarettes for resale:

6 (i) in violation of a license; or

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

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

11 (i) a felony; or

12 (ii) a misdemeanor that is a crime of moral turpitude and is directly
13 related to the fitness and qualification of the applicant or licensee; [or]

14 (7) has not paid a tax due before October 1 of the year after the tax
15 became due; OR

16 (8) VIOLATES TITLE 8, SUBTITLE 9 OF THE HEALTH - GENERAL ARTICLE.

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

19 (1) Title 12 of the Tax - General Article, or regulations adopted under
20 that Title; or

21 (2) Title 16 of the Business Regulation Article, or regulations adopted
22 under that Title.

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

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

29 (1) 1 year has passed since the license was revoked; and

30 (2) it satisfactorily appears to the Comptroller that the applicant will
31 comply with this Title and any regulations adopted under this Title.

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

- 1 (1) the applicant;
- 2 (2) the business to be operated; and
- 3 (3) the facts set forth in the application.

4 16-212.

5 (e) (1) Except for a violation of [Article 27, § 404 of the Code] § 10-107 OF
6 THE CRIMINAL LAW ARTICLE OR § 8-902 OF THE HEALTH - GENERAL ARTICLE,
7 whenever any license issued under the provisions of this subtitle is suspended or
8 revoked by the Comptroller, the licensee may, before the effective date of the
9 suspension or revocation, petition the Comptroller for permission to make an offer of
10 compromise consisting of a sum of money in lieu of serving the suspension or
11 revocation.

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

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

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

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

20 (ii) the payment of the sum of money will achieve the desired
21 disciplinary purposes.

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

24 16-306.

25 (A) Subject to the hearing provisions of § 16-307 of this subtitle, the
26 Comptroller may deny a county license to an applicant, reprimand a county licensee,
27 or suspend or revoke a county license if the applicant or licensee:

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

30 (2) fraudulently or deceptively uses a license; [or]

31 (3) fails to comply with the Maryland Cigarette Sales Below Cost Act and
32 regulations adopted under it; OR

33 (4) VIOLATES TITLE 8, SUBTITLE 9 OF THE HEALTH - GENERAL ARTICLE.

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

4 SECTION 2. AND BE IT FURTHER ENACTED, That programs currently
5 operated by the Montgomery County Board of License Commissioners and the
6 Howard County Department of Health are not preempted by this Act. If additional
7 counties initiate similar programs, those programs will not be preempted by this Act.

8 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
9 effect July 1, 2002.