

HOUSE BILL 631

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SB 896/02 - SRU

2003 Regular Session
3lr0504
CF 3lr0416

By: **Delegate Frush**

Introduced and read first time: February 7, 2003

Assigned to: Health and Government Operations

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 24-1101 through 24-1110, inclusive, to be under the new subtitle
21 "Subtitle 11. Comprehensive Control of Sale of Tobacco Products to Minors"
22 Annotated Code of Maryland
23 (2000 Replacement Volume and 2002 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 2002 Supplement)

29 BY adding to
30 Article - Business Regulation
31 Section 16-308.1

1 Annotated Code of Maryland
2 (1998 Replacement Volume and 2002 Supplement)

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

5 **Article - Health - General**

6 SUBTITLE 11. COMPREHENSIVE CONTROL OF SALE OF TOBACCO PRODUCTS TO
7 MINORS.

8 24-1101.

9 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
10 INDICATED.

11 (B) "LAW ENFORCEMENT AGENCY" MEANS AN ENTITY THAT EMPLOYS A LAW
12 ENFORCEMENT OFFICIAL AS DEFINED § 4-201(D) OF THE CRIMINAL LAW ARTICLE.

13 (C) (1) "RETAILER" MEANS A BUSINESS ENTITY AND ITS AGENTS THAT:

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

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

17 (III) HOLD 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 (D) "TOBACCO PRODUCT" MEANS ANY SUBSTANCE CONTAINING TOBACCO,
26 INCLUDING CIGARETTES, CIGARS, SMOKING TOBACCO, SNUFF, OR SMOKELESS
27 TOBACCO.

28 24-1102.

29 FOR THE PURPOSES OF THIS SUBTITLE, EACH SEPARATE INCIDENT AT A
30 DIFFERENT TIME AND OCCASION IS A VIOLATION.

1 24-1103.

2 A RETAILER MAY NOT SELL A TOBACCO PRODUCT TO A MINOR.

3 24-1104.

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

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

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

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

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

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

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

33 (2) THE DEPARTMENT OR ITS DESIGNEE SHALL ISSUE THE RETAILER
34 THE APPROPRIATE PENALTY IN ACCORDANCE WITH § 24-1105 OF THIS SUBTITLE.

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

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

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

6 24-1105.

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

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

22 (B) IN ADDITION TO THE PENALTIES IN SUBSECTION (A) OF THIS SECTION, A
23 RETAILER WHO SELLS TOBACCO PRODUCTS TO A MINOR SHALL BE SUBJECT TO THE
24 EDUCATION PROGRAM DEVELOPED BY THE DEPARTMENT UNDER § 24-1109 OF THIS
25 SUBTITLE.

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

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

35 (2) A RETAILER IS SUBJECT TO PROSECUTION UNDER § 10-107 OF THE
36 CRIMINAL LAW ARTICLE AND IS LIABLE FOR A CIVIL PENALTY UNDER TITLE 16 OF

1 THE BUSINESS REGULATION ARTICLE FOR ANY CONDUCT FOR WHICH THE RETAILER
2 IS NOT PENALIZED UNDER THIS SECTION.

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

6 (E) (1) IN THE CASE OF A JURISDICTION WITH AN ENFORCEMENT
7 PROGRAM, THE DEPARTMENT, ON THE RECOMMENDATION OF THE JURISDICTION,
8 MAY ORDER THE IMPOSITION OF APPROPRIATE CIVIL PENALTIES IN ACCORDANCE
9 WITH THIS SECTION.

10 (2) A VIOLATION OF A LOCAL ORDINANCE, RESOLUTION, OR RULE
11 CONSTITUTES A VIOLATION OF THIS SUBTITLE FOR PURPOSES OF DETERMINING
12 THE APPROPRIATE PENALTY UNDER THIS SECTION.

13 24-1106.

14 (A) EXCEPT AS OTHERWISE PROVIDED IN § 10-226 OF THE STATE
15 GOVERNMENT ARTICLE, BEFORE THE SECRETARY TAKES ANY FINAL ACTION UNDER
16 § 24-1105 OF THIS SUBTITLE, THE SECRETARY OR THE SECRETARY'S DESIGNEE SHALL
17 GIVE THE RETAILER AGAINST WHOM THE ACTION IS CONTEMPLATED AN
18 OPPORTUNITY FOR A HEARING BEFORE THE SECRETARY OR THE SECRETARY'S
19 DESIGNEE.

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

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

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

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

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

34 24-1107.

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

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

4 24-1108.

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

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

11 24-1109.

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

16 (B) THE DEPARTMENT SHALL OFFER THE EDUCATION PROGRAM TO ALL
17 RETAILERS THAT HAVE VIOLATED THIS SUBTITLE AND TO ALL RETAILERS THAT
18 VOLUNTARILY REQUEST TO TAKE THE EDUCATION PROGRAM.

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

- 21 (1) CENTRAL MARYLAND;
- 22 (2) THE EASTERN SHORE;
- 23 (3) SOUTHERN MARYLAND; AND
- 24 (4) WESTERN MARYLAND.

25 24-1110.

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

29 **Article - Business Regulation**

30 16-210.

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

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

3 (2) fraudulently or deceptively uses a license;

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

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

8 (5) buys cigarettes for resale:

9 (i) in violation of a license; or

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

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

14 (i) a felony; or

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

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

19 (8) VIOLATES TITLE 24, SUBTITLE 11 OF THE HEALTH - GENERAL
20 ARTICLE.

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

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

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

27 (C) THE COMPTROLLER SHALL SUSPEND A LICENSE UPON RECEIPT OF THE
28 WRITTEN NOTICE OF THE ORDER FROM THE SECRETARY UNDER § 24-1107 OF THE
29 HEALTH - GENERAL ARTICLE.

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

33 (1) 1 year has passed since the license was revoked; and

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

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

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

8 16-212.

9 (e) (1) Except for a violation of § 10-107 of the Criminal Law Article OR §
10 24-1103 OF THE HEALTH - GENERAL ARTICLE, whenever any license issued under the
11 provisions of this subtitle is suspended or revoked by the Comptroller, the licensee
12 may, before the effective date of the suspension or revocation, petition the Comptroller
13 for permission to make an offer of compromise consisting of a sum of money in lieu of
14 serving the suspension or revocation.

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

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

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

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

23 (ii) the payment of the sum of money will achieve the desired
24 disciplinary purposes.

25 (5) The Comptroller may [promulgate rules and] ADOPT regulations
26 necessary to carry out the purposes of this subsection.

27 16-306.

28 (A) Subject to the hearing provisions of § 16-307 of this subtitle, the
29 Comptroller may deny a county license to an applicant, reprimand a county licensee,
30 or suspend or revoke a county 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; [or]

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

3 (4) VIOLATES TITLE 24, SUBTITLE 11 OF THE HEALTH - GENERAL
4 ARTICLE.

5 (B) THE COMPTROLLER SHALL SUSPEND A LICENSE UPON RECEIPT OF THE
6 WRITTEN NOTICE OF THE ORDER FROM THE SECRETARY UNDER § 24-1107 OF THE
7 HEALTH - GENERAL ARTICLE.

8 16-308.1.

9 THIS TITLE MAY NOT BE CONSTRUED TO PREEMPT LOCAL GOVERNMENTS
10 FROM ENACTING AND ENFORCING ADDITIONAL MEASURES TO REDUCE ILLEGAL
11 SALES OF TOBACCO PRODUCTS TO CHILDREN.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
13 effect July 1, 2003.