

SENATE BILL 697

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CF HB 681

By: **Senators McFadden, Astle, Della, Haines, Kelley, Middleton, Muse, and Robey**

Introduced and read first time: February 6, 2009

Assigned to: Finance and Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Business Regulation – Distribution of Tobacco Products**

3 FOR the purpose of requiring that certain cigarette business licensees display a
4 certain sign regarding certain prohibitions and penalties in a certain manner;
5 establishing certain restrictions on the sale of tobacco products through a
6 certain self-service display; prohibiting the distribution of certain tobacco
7 products except under certain circumstances; authorizing a court to require that
8 a certain license be suspended or revoked if a certain licensee is convicted of a
9 certain violation; prohibiting the suspension or revocation of a certain license if
10 a certain licensee can establish a certain defense; requiring the Comptroller to
11 create and maintain a record of certain information related to certain violations;
12 prohibiting a minor from purchasing or attempting to purchase a tobacco
13 product or cigarette rolling paper; defining certain terms; and generally relating
14 to the sale or distribution of tobacco products.

15 BY repealing and reenacting, with amendments,
16 Article – Business Regulation
17 Section 16-209; 16-3A-01, and 16-3A-02 to be under the amended subtitle
18 “Subtitle 3A. Tobacco Product Vending Machines and Self-Service
19 Displays”
20 Annotated Code of Maryland
21 (2004 Replacement Volume and 2008 Supplement)

22 BY repealing and reenacting, without amendments,
23 Article – Business Regulation
24 Section 16-3A-03
25 Annotated Code of Maryland
26 (2004 Replacement Volume and 2008 Supplement)

27 BY repealing and reenacting, without amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Criminal Law
2 Sections 1–101(g) and 10–101(b) and (d)
3 Annotated Code of Maryland
4 (2002 Volume and 2008 Supplement)

5 BY repealing and reenacting, with amendments,
6 Article – Criminal Law
7 Section 10–107 and 10–108
8 Annotated Code of Maryland
9 (2002 Volume and 2008 Supplement)

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

12 **Article – Business Regulation**

13 16–209.

14 (a) A licensee:

15 (1) shall display a license in the way that the Comptroller requires by
16 regulation; **AND**

17 (2) **SHALL DISPLAY AT EACH PLACE OF BUSINESS ON A**
18 **CONSPICUOUS SIGN THE APPLICABLE PENALTIES AND PROHIBITIONS UNDER §**
19 **10–107 OF THE CRIMINAL LAW ARTICLE IN THE WAY THAT THE COMPTROLLER**
20 **REQUIRES BY REGULATION.**

21 (b) A licensee who sells cigarettes through a vending machine:

22 (1) shall place each package of cigarettes in the machine so that when
23 the package is visible the tax stamps required by § 12–304 of the Tax – General Article
24 are also visible; and

25 (2) in the way that the Comptroller requires by regulation, shall:

26 (i) identify each vending machine with a conspicuous label that
27 states the licensee’s name, address, and telephone number; and

28 (ii) display on a conspicuous label applicable prohibitions and
29 penalties under § 10–107 of the Criminal Law Article.

30 Subtitle 3A. Tobacco Product Vending Machines **AND SELF–SERVICE DISPLAYS.**

31 16–3A–01.

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

1 (b) "Owner" means the person that owns or operates an establishment in
2 which a vending machine **OR SELF-SERVICE DISPLAY** is located.

3 (c) **"RETAIL TOBACCO BUSINESS" MEANS A SOLE PROPRIETORSHIP,**
4 **LIMITED LIABILITY COMPANY, CORPORATION, PARTNERSHIP, OR OTHER**
5 **ENTERPRISE IN WHICH:**

6 (1) **THE PRIMARY ACTIVITY OF THE BUSINESS IS THE RETAIL**
7 **SALE OF TOBACCO PRODUCTS AND ACCESSORIES; AND**

8 (2) **THE SALE OF OTHER PRODUCTS IS INCIDENTAL.**

9 (d) (1) **"SELF-SERVICE DISPLAY" MEANS ANY DISPLAY THAT**
10 **CONTAINS TOBACCO PRODUCTS THAT ARE PHYSICALLY ACCESSIBLE TO**
11 **CUSTOMERS WITHOUT ASSISTANCE FROM THE OWNER OR EMPLOYEE OR AGENT**
12 **OF THE OWNER.**

13 (2) **"SELF-SERVICE DISPLAY" DOES NOT INCLUDE A DISPLAY**
14 **CASE THAT HOLDS TOBACCO PRODUCTS BEHIND LOCKED DOORS.**

15 [(c)] (E) "Tobacco product" means any substance containing tobacco,
16 including cigarettes, cigars, smoking tobacco, snuff, or smokeless tobacco.

17 [(d)] (F) "Vending machine" means any mechanical, electronic, or similar
18 self-service device that on insertion of a coin, coins, token, or other similar means
19 dispenses a tobacco product.

20 16-3A-02.

21 (A) A person may not sell or dispense or offer to sell or dispense a tobacco
22 product through a vending machine in the State, unless the vending machine:

23 (1) is located in an establishment that minors are prohibited by
24 law from entering or an establishment that is a bona fide fraternal or veterans
25 organization; or

26 (2) can only be operated with a token, card, or similar device
27 that an individual can only obtain or purchase from the owner or an employee or agent
28 of the owner.

29 (B) **A PERSON MAY NOT SELL OR DISPENSE OR OFFER TO SELL OR**
30 **DISPENSE A TOBACCO PRODUCT THROUGH A SELF-SERVICE DISPLAY UNLESS**
31 **THE SELF-SERVICE DISPLAY IS LOCATED IN A RETAIL TOBACCO BUSINESS.**

32 16-3A-03.

1 A person who violates this subtitle is guilty of a misdemeanor and on conviction
2 is subject to a fine not exceeding \$100.

3 **Article – Criminal Law**

4 1–101.

5 (g) “Minor” means an individual under the age of 18 years.

6 10–101.

7 (b) “Distribute” means to:

8 (1) give, sell, deliver, dispense, issue, or offer to give, sell, deliver,
9 dispense, or issue; or

10 (2) cause or hire a person to give, sell, deliver, dispense, issue or offer
11 to give, sell, deliver, dispense, or issue.

12 (d) (1) “Tobacco product” means a substance containing tobacco.

13 (2) “Tobacco product” includes cigarettes, cigars, smoking tobacco,
14 snuff, smokeless tobacco, and candy–like products that contain tobacco.

15 10–107.

16 (a) This section does not apply to the distribution of a coupon that is
17 redeemable for a tobacco product, if the coupon is:

18 (1) contained in a newspaper, magazine, or other type of publication in
19 which the coupon is incidental to the primary purpose of the publication; or

20 (2) sent through the mail.

21 (b) (1) This subsection does not apply to the distribution of a tobacco
22 product or tobacco paraphernalia to a minor who is acting solely as the agent of the
23 minor’s employer if the employer distributes tobacco products or tobacco
24 paraphernalia for commercial purposes.

25 (2) A person who distributes tobacco products for commercial
26 purposes, including a person licensed under Title 16 of the Business Regulation
27 Article, may not distribute to a minor:

28 (i) a tobacco product;

29 (ii) tobacco paraphernalia; or

1 (iii) a coupon redeemable for a tobacco product.

2 (c) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
3 SUBSECTION, A PERSON WHO DISTRIBUTES TOBACCO PRODUCTS FOR
4 COMMERCIAL PURPOSES, INCLUDING A PERSON LICENSED UNDER TITLE 16 OF
5 THE BUSINESS REGULATION ARTICLE, MAY NOT DISTRIBUTE TOBACCO
6 PRODUCTS TO ANY PERSON, UNLESS THE PERSON PROVIDES VALID
7 IDENTIFICATION THAT:

8 (I) IS ISSUED BY AN EMPLOYER, GOVERNMENT UNIT, OR
9 INSTITUTION OF HIGHER EDUCATION; AND

10 (II) IDENTIFIES THE PURCHASER AS BEING AT LEAST 18
11 YEARS OF AGE.

12 (2) THIS SUBSECTION DOES NOT APPLY IF A REASONABLY
13 PRUDENT DISTRIBUTOR OF TOBACCO PRODUCTS WOULD CONCLUDE, ON THE
14 BASIS OF THE PURCHASER'S OR RECIPIENT'S APPEARANCE, THAT:

15 (I) THE PURCHASER OR RECIPIENT APPEARED TO BE AT
16 LEAST 27 YEARS OF AGE; OR

17 (II) AT THE TIME OF THE DISTRIBUTION, THE PURCHASER
18 OR RECIPIENT WAS NOT A MINOR.

19 [(c)] (D) A person not described in subsection (b)(2) of this section may not:

20 (1) purchase for or sell a tobacco product to a minor; or

21 (2) distribute tobacco paraphernalia to a minor.

22 [(d)] (E) In a prosecution for a violation of this section, it is a defense that
23 the defendant examined the purchaser's or recipient's driver's license or other valid
24 identification issued by an employer, government unit, or institution of higher
25 education that positively identified the purchaser or recipient as at least 18 years of
26 age.

27 [(e)] (F) A person who violates this section is guilty of a misdemeanor and
28 on conviction is subject to a fine not exceeding:

29 (1) \$300 for a first violation;

30 (2) \$1,000 for a second violation occurring within 2 years after the first
31 violation; and

1 (3) \$3,000 for each subsequent violation occurring within 2 years after
2 the preceding violation.

3 **(G) (1) IF A PERSON IS CONVICTED OF A SECOND VIOLATION OF**
4 **SUBSECTION (B)(2) OF THIS SECTION WITHIN 2 YEARS AFTER THE FIRST**
5 **VIOLATION, THE COURT MAY ORDER THE COMPTROLLER TO SUSPEND, FOR UP**
6 **TO 1 MONTH, ANY LICENSE ISSUED UNDER TITLE 16, SUBTITLE 2 OF THE**
7 **BUSINESS REGULATION ARTICLE FOR THE BUSINESS LOCATION WHERE THE**
8 **VIOLATION OCCURRED.**

9 **(2) IF A PERSON IS CONVICTED OF A THIRD VIOLATION OF**
10 **SUBSECTION (B)(2) OF THIS SECTION WITHIN 3 YEARS AFTER THE SECOND**
11 **VIOLATION, THE COURT MAY ORDER THE COMPTROLLER TO REVOKE ANY**
12 **LICENSE ISSUED UNDER TITLE 16, SUBTITLE 2 OF THE BUSINESS REGULATION**
13 **ARTICLE FOR THE BUSINESS LOCATION WHERE THE VIOLATION OCCURRED.**

14 **(3) IF THE COURT ORDERS A LICENSE TO BE SUSPENDED OR**
15 **REVOKED UNDER THIS SUBSECTION, THE COURT SHALL PROVIDE NOTICE TO**
16 **THE COMPTROLLER OF THAT ORDER.**

17 **(4) A LICENSE MAY NOT BE SUSPENDED OR REVOKED UNDER**
18 **THIS SUBSECTION IF THE LICENSEE ESTABLISHES THAT THE LICENSEE:**

19 **(I) HAS NOT ASSERTED A DEFENSE UNDER THIS**
20 **PARAGRAPH MORE THAN TWO TIMES WITHIN THE PAST 2 YEARS;**

21 **(II) POSTED SIGNAGE AS REQUIRED BY § 16-209 OF THE**
22 **BUSINESS REGULATION ARTICLE;**

23 **(III) 1. OBTAINED A SIGNED STATEMENT FROM EACH**
24 **EMPLOYEE WHO WORKS AT THE BUSINESS LOCATION WHERE THE VIOLATION**
25 **OCCURRED AFFIRMING THAT THE EMPLOYEE WAS INFORMED OF AND**
26 **UNDERSTOOD THE APPLICABLE REQUIREMENTS UNDER THIS SECTION; AND**

27 **2. MAINTAINED THE SIGNED STATEMENT AT THE**
28 **BUSINESS LOCATION WHERE THE VIOLATION OCCURRED FOR AT LEAST 6**
29 **MONTHS AFTER THE LAST DATE OF THE INDIVIDUAL'S EMPLOYMENT AT THE**
30 **BUSINESS LOCATION;**

31 **(IV) 1. ADOPTED A WRITTEN POLICY AGAINST THE SALE**
32 **OR DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS THAT INCLUDED**
33 **REASONABLE DISCIPLINARY SANCTIONS; AND**

1 **2. ENFORCED THE SANCTIONS PROVIDED IN THE**
2 **POLICY; AND**

3 **(V) FOR EMPLOYEES WHO SOLD OR DISTRIBUTED TOBACCO**
4 **PRODUCTS AT THE BUSINESS LOCATION WHERE THE VIOLATION OCCURRED,**
5 **PROVIDED TRAINING THAT INCLUDED:**

6 **1. A DISCUSSION OF LAWS DESIGNED TO PREVENT**
7 **THE DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS AND RELATED**
8 **COMPLIANCE ISSUES;**

9 **2. A DEMONSTRATION OF REALISTIC SCENARIOS**
10 **THAT EMPLOYEES MIGHT FACE IN SEEKING TO COMPLY WITH THE PROVISIONS**
11 **OF THIS SECTION; AND**

12 **3. A TEST ON THE SUBJECTS OF THE TRAINING**
13 **MATERIAL.**

14 **[(f)](H)** For purposes of this section, each separate incident at a different
15 time and occasion is a violation.

16 **(I) (1) THE COMPTROLLER SHALL CREATE A RECORD FOR EACH**
17 **VIOLATION OF SUBSECTION (B)(2) OF THIS SECTION THAT INCLUDES:**

18 **(I) THE NAME, ADDRESS, AND PHONE NUMBER OF THE**
19 **BUSINESS LOCATION WHERE THE VIOLATION OCCURRED;**

20 **(II) THE DATE OF THE VIOLATION; AND**

21 **(III) THE DATE ON WHICH ANY APPLICABLE CIVIL PENALTY**
22 **WAS PAID.**

23 **(2) THE COMPTROLLER SHALL MAINTAIN THE RECORD**
24 **REQUIRED IN PARAGRAPH (1) OF THIS SUBSECTION IN A CENTRAL REPOSITORY**
25 **THAT IS AVAILABLE TO THE PUBLIC.**

26 10-108.

27 (a) In this section, "violation" has the meaning stated in § 3-8A-01 of the
28 Courts Article.

29 (b) This section does not apply to the possession of a tobacco product or
30 cigarette rolling paper by a minor who is acting as the agent of the minor's employer
31 within the scope of employment.

1 (c) A minor may not:

2 (1) use or possess a tobacco product or cigarette rolling paper; [or]

3 (2) **PURCHASE OR ATTEMPT TO PURCHASE A TOBACCO PRODUCT**
4 **OR CIGARETTE ROLLING PAPER; OR**

5 [(2)] (3) obtain or attempt to obtain a tobacco product or cigarette
6 rolling paper by using a form of identification that:

7 (i) is falsified; or

8 (ii) identifies an individual other than the minor.

9 (d) (1) A violation of this section is a civil offense.

10 (2) A minor who violates this section is subject to the procedures and
11 dispositions provided in Title 3, Subtitle 8A of the Courts Article.

12 (e) A law enforcement officer authorized to make arrests shall issue a
13 citation to a minor if the law enforcement officer has probable cause to believe that the
14 minor is committing or has committed a violation of this section.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2009.