

# HOUSE BILL 278

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By: **Delegates Frush, Morhaim, Beidle, Burns, Gaines, Healey, Hixson, Holmes, Howard, Hubbard, Ivey, Jones, Kach, Nathan-Pulliam, Pena-Melnyk, B. Robinson, S. Robinson, Rosenberg, Stocksedale, Swain, V. Turner, and Valentino-Smith**

Introduced and read first time: January 20, 2014

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Tobacco Products – Minimum Age**

3 FOR the purpose of altering the age requirements for certain provisions of law relating  
4 to tobacco products; prohibiting a person from selling or dispensing tobacco  
5 products through a vending machine unless the machine is located in an  
6 establishment that an individual under a certain age is prohibited by law from  
7 entering; prohibiting the distribution of a tobacco product or tobacco  
8 paraphernalia to an individual under a certain age except under certain  
9 circumstances; prohibiting an individual under a certain age from using or  
10 possessing a tobacco product or cigarette rolling paper or from obtaining or  
11 attempting to obtain a tobacco product or cigarette rolling paper using false  
12 identification; altering a certain provision relating to budget appropriations by  
13 the Governor aimed at reducing tobacco use; altering a certain purpose of the  
14 Cigarette Restitution Fund; making conforming changes; and generally relating  
15 to the minimum age for the purchase of tobacco products.

16 BY repealing and reenacting, with amendments,  
17 Article – Business Regulation  
18 Section 16-3A-02  
19 Annotated Code of Maryland  
20 (2010 Replacement Volume and 2013 Supplement)

21 BY repealing and reenacting, with amendments,  
22 Article – Criminal Law  
23 Section 10-107 and 10-108  
24 Annotated Code of Maryland  
25 (2012 Replacement Volume and 2013 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,  
2 Article – Health – General  
3 Section 13–1015  
4 Annotated Code of Maryland  
5 (2009 Replacement Volume and 2013 Supplement)

6 BY repealing and reenacting, with amendments,  
7 Article – Local Government  
8 Section 1–1203  
9 Annotated Code of Maryland  
10 (2013 Volume)

11 BY repealing and reenacting, with amendments,  
12 Article – State Finance and Procurement  
13 Section 7–317  
14 Annotated Code of Maryland  
15 (2009 Replacement Volume and 2013 Supplement)

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

18 **Article – Business Regulation**

19 16–3A–02.

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

22 (1) is located in an establishment that **[minors] INDIVIDUALS UNDER**  
23 **THE AGE OF 21 YEARS** are prohibited by law from entering or an establishment that  
24 is a bona fide fraternal or veterans organization; or

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

28 **Article – Criminal Law**

29 10–107.

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

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

34 (2) sent through the mail.

1           (b) (1) This subsection does not apply to the distribution of a tobacco  
2 product or tobacco paraphernalia to [a minor] **AN INDIVIDUAL UNDER THE AGE OF**  
3 **21 YEARS** who is acting solely as the agent of the [minor's] **INDIVIDUAL'S** employer if  
4 the employer distributes tobacco products or tobacco paraphernalia for commercial  
5 purposes.

6           (2) A person who distributes tobacco products for commercial  
7 purposes, including a person licensed under Title 16 of the Business Regulation  
8 Article, may not distribute to [a minor] **AN INDIVIDUAL UNDER THE AGE OF 21**  
9 **YEARS:**

10                           (i) a tobacco product;

11                           (ii) tobacco paraphernalia; or

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

13           (c) A person not described in subsection (b)(2) of this section may not:

14                           (1) purchase for or sell a tobacco product to [a minor] **AN INDIVIDUAL**  
15 **UNDER THE AGE OF 21 YEARS;** or

16                           (2) distribute tobacco paraphernalia to [a minor] **AN INDIVIDUAL**  
17 **UNDER THE AGE OF 21 YEARS.**

18           (d) In a prosecution for a violation of this section, it is a defense that the  
19 defendant examined the purchaser's or recipient's driver's license or other valid  
20 identification issued by an employer, government unit, or institution of higher  
21 education that positively identified the purchaser or recipient as at least [18] **21** years  
22 of age.

23           (e) A person who violates this section is guilty of a misdemeanor and on  
24 conviction is subject to a fine not exceeding:

25                           (1) \$300 for a first violation;

26                           (2) \$1,000 for a second violation occurring within 2 years after the first  
27 violation; and

28                           (3) \$3,000 for each subsequent violation occurring within 2 years after  
29 the preceding violation.

30           (f) For purposes of this section, each separate incident at a different time  
31 and occasion is a violation.

1 10–108.

2 (a) In this section, “violation” has the meaning stated in § 3–8A–01 of the  
3 Courts Article.

4 (b) This section does not apply to the possession of a tobacco product or  
5 cigarette rolling paper by [a minor] **AN INDIVIDUAL UNDER THE AGE OF 21 YEARS**  
6 who is acting as the agent of the [minor’s] **INDIVIDUAL’S** employer within the scope of  
7 employment.

8 (c) [A minor] **AN INDIVIDUAL UNDER THE AGE OF 21 YEARS** may not:

9 (1) use or possess a tobacco product or cigarette rolling paper; or

10 (2) obtain or attempt to obtain a tobacco product or cigarette rolling  
11 paper by using a form of identification that:

12 (i) is falsified; or

13 (ii) identifies an individual other than the [minor] **INDIVIDUAL**  
14 **USING THE IDENTIFICATION.**

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

16 (2) [A minor] **AN INDIVIDUAL** who violates this section is subject to  
17 the procedures and dispositions provided in Title 3, Subtitle 8A of the Courts Article.

18 (e) A law enforcement officer authorized to make arrests shall issue a  
19 citation to [a minor] **AN INDIVIDUAL** if the law enforcement officer has probable cause  
20 to believe that the [minor] **INDIVIDUAL** is committing or has committed a violation of  
21 this section.

## 22 **Article – Health – General**

23 13–1015.

24 (a) For fiscal year 2011 and fiscal year 2012, the Governor shall include at  
25 least \$6,000,000 in the annual budget in appropriations for activities aimed at  
26 reducing tobacco use in Maryland as recommended by the Centers for Disease Control  
27 and Prevention, including:

28 (1) Media campaigns aimed at reducing smoking initiation and  
29 encouraging smokers to quit smoking;

30 (2) Media campaigns educating the public about the dangers of  
31 secondhand smoke exposure;

1 (3) Enforcement of existing laws banning the sale or distribution of  
2 tobacco products to [minors] **INDIVIDUALS UNDER THE AGE OF 21 YEARS**;

3 (4) Promotion and implementation of smoking cessation programs;  
4 and

5 (5) Implementation of school-based tobacco education programs.

6 (b) For fiscal year 2013 and each fiscal year thereafter, the Governor shall  
7 include at least \$10,000,000 in the annual budget in appropriations for the purposes  
8 described in subsection (a) of this section.

9 **Article – Local Government**

10 1–1203.

11 (a) This section applies only in:

12 (1) Carroll County;

13 (2) Cecil County;

14 (3) Garrett County; and

15 (4) St. Mary's County.

16 (b) Subsection (c)(3) of this section does not apply to the distribution of a  
17 coupon that is redeemable for a tobacco product if the coupon:

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

20 (2) is sent through the mail.

21 (c) A person may not:

22 (1) distribute a tobacco product to [a minor] **AN INDIVIDUAL UNDER**  
23 **THE AGE OF 21 YEARS**, unless the [minor] **INDIVIDUAL** is acting solely as the agent  
24 of the [minor's] **INDIVIDUAL'S** employer who is engaged in the business of  
25 distributing tobacco products;

26 (2) distribute cigarette rolling papers to [a minor] **AN INDIVIDUAL**  
27 **UNDER THE AGE OF 21 YEARS**; or

1 (3) distribute to [a minor] **AN INDIVIDUAL UNDER THE AGE OF 21**  
2 **YEARS** a coupon redeemable for a tobacco product.

3 (d) A person has not violated this section if:

4 (1) the person examined the driver's license or other valid  
5 government-issued identification presented by the recipient of a tobacco product,  
6 cigarette rolling paper, or coupon redeemable for a tobacco product; and

7 (2) the license or other identification positively identified the recipient  
8 as being at least [18] **21** years old.

9 (e) (1) In Carroll County and St. Mary's County, a person who violates  
10 this section commits a civil infraction and is subject to a civil penalty of:

11 (i) \$300 for the first violation; and

12 (ii) \$500 for any subsequent violation within 24 months after  
13 the previous citation.

14 (2) In Cecil County, a person who violates this section commits a civil  
15 infraction and is subject to a civil penalty of:

16 (i) \$300 for the first violation;

17 (ii) \$500 for a second violation; and

18 (iii) \$750 for any subsequent violation.

19 (3) In Garrett County, a person who violates this section commits a  
20 civil infraction and is subject to a civil penalty not exceeding \$300.

## 21 **Article – State Finance and Procurement**

22 7-317.

23 (a) There is a Cigarette Restitution Fund.

24 (b) (1) The Fund is a continuing, nonlapsing fund that is not subject to §  
25 7-302 of this subtitle.

26 (2) There shall be credited to the Fund all revenues consisting of funds  
27 received by the State from any source resulting, directly or indirectly, from any  
28 judgment against or settlement with tobacco product manufacturers, tobacco research  
29 associations, or any other person in the tobacco industry relating to litigation,  
30 administrative proceedings, or any other claims made or prosecuted by the State to  
31 recover damages for violations of State law.

1                   (3)     There shall be credited to the Fund all moneys collected under §  
2 24–508 of the Health – General Article or § 5–608 of the Labor and Employment  
3 Article.

4           (c)     The Treasurer shall:

5                   (1)     invest and reinvest the Fund in the same manner as other State  
6 funds; and

7                   (2)     credit any investment earnings to the Fund.

8           (d)     Expenditures from the Fund shall be made by an appropriation in the  
9 annual State budget.

10           (e)     (1)     The Fund shall be expended subject to any restrictions on its use or  
11 other limitations on its allocation that are:

12                           (i)     expressly provided by statute;

13                           (ii)    required as a condition of the acceptance of funds; or

14                           (iii)  determined to be necessary to avoid recoupment by the  
15 federal government of money paid to the Fund.

16                   (2)     Disbursements from the Fund to programs funded by the State or  
17 with federal funds administered by the State shall be used solely to supplement, and  
18 not to supplant, funds otherwise available for the programs under federal or State law  
19 as provided in this section.

20           (f)     (1)     The Cigarette Restitution Fund shall be used to fund:

21                           (i)     the Tobacco Use Prevention and Cessation Program  
22 established under Title 13, Subtitle 10 of the Health – General Article;

23                           (ii)    the Cancer Prevention, Education, Screening, and  
24 Treatment Program established under Title 13, Subtitle 11 of the Health – General  
25 Article; and

26                           (iii)  other programs that serve the following purposes:

27                                   1.     reduction of the use of tobacco products by [minors]  
28 **INDIVIDUALS UNDER THE AGE OF 21 YEARS;**

29                                   2.     implementation of the Southern Maryland Regional  
30 Strategy–Action Plan for Agriculture adopted by the Tri–County Council for Southern

1 Maryland with an emphasis on alternative crop uses for agricultural land now used for  
2 growing tobacco;

3 3. public and school education campaigns to decrease  
4 tobacco use with initial emphasis on areas targeted by tobacco manufacturers in  
5 marketing and promoting cigarette and tobacco products;

6 4. smoking cessation programs;

7 5. enforcement of the laws regarding tobacco sales;

8 6. the purposes of the Maryland Health Care  
9 Foundation under Title 20, Subtitle 5 of the Health – General Article;

10 7. primary health care in rural areas of the State and  
11 areas targeted by tobacco manufacturers in marketing and promoting cigarette and  
12 tobacco products;

13 8. prevention, treatment, and research concerning  
14 cancer, heart disease, lung disease, tobacco product use, and tobacco control, including  
15 operating costs and related capital projects;

16 9. substance abuse treatment and prevention programs;  
17 and

18 10. any other public purpose.

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

22 (g) (1) Amounts may only be expended from the Fund through  
23 appropriations in the State budget bill as provided in this subsection.

24 (2) The Governor shall include in the annual budget bill  
25 appropriations from the Fund equivalent to the lesser of \$100,000,000 or 90% of the  
26 funds estimated to be available to the Fund in the fiscal year for which the  
27 appropriations are made.

28 (3) For each fiscal year for which appropriations are made, at least  
29 50% of the appropriations shall be made for those purposes enumerated in subsection  
30 (f)(1)(i), (ii), and (iii)1 through 9 of this section subject to the requirement of subsection  
31 (e)(2) of this section.

32 (4) For each fiscal year for which appropriations are made, at least  
33 30% of the appropriations shall be made for the purposes of the Maryland Medical  
34 Assistance Program.



1           (5) For each fiscal year for which appropriations are made, 0.15% of  
2 the Fund shall be appropriated for the purposes of enforcement of Title 16, Subtitle 5  
3 of the Business Regulation Article.

4           (6) Any additional appropriations, not subject to paragraph (3),  
5 paragraph (4), or paragraph (5) of this subsection, may be made for any lawful  
6 purpose.

7           (h) For each program, project or activity receiving funds appropriated under  
8 subsection (g)(3) of this section, the Governor shall:

9           (1) develop appropriate statements of vision, mission, key goals, key  
10 objectives, and key performance indicators and report these statements in a discrete  
11 part of the State budget submission, which shall also provide data for key performance  
12 indicators; and

13           (2) report annually, subject to § 2-1246 of the State Government  
14 Article, to the General Assembly no later than October 1 on:

15                   (i) total funds expended, by program and subdivision, in the  
16 prior fiscal year from the Fund established under this section; and

17                   (ii) the specific outcomes or public benefits resulting from that  
18 expenditure.

19           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
20 October 1, 2014.