

HOUSE BILL 1504

J1, C2

6lr2023

By: **Delegates Rosenberg and Waldstreicher**

Introduced and read first time: February 12, 2016

Assigned to: Economic Matters and Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Department of Health and Mental Hygiene – Distribution of Tobacco Products**
3 **to Minors – Prohibition and Enforcement**

4 FOR the purpose of prohibiting a person from distributing certain tobacco products, certain
5 paraphernalia, or certain coupons to a minor; providing that a person who violates a
6 certain provision of this Act is subject to certain civil penalties; establishing a certain
7 defense in a prosecution for a certain violation; providing that a county health officer,
8 or a designee of a county health officer, may issue a certain civil citation for a
9 violation of a certain provision of this Act; requiring certain civil citations to include
10 certain information and to be processed in a certain manner; providing for a certain
11 election to stand trial; requiring the District Court to remit certain collected
12 penalties in a certain manner; providing that adjudication of a violation of a certain
13 provision of this Act is not a criminal conviction for any purpose; requiring the
14 Comptroller's Office to provide certain information to the Prevention and Health
15 Promotion Administration each year; requiring the Comptroller's Office to provide
16 certain information to the General Assembly on or before a certain date each year;
17 requiring local health departments to report certain violations to the Comptroller's
18 Office; requiring the Department of Health and Mental Hygiene, in collaboration and
19 consultation with certain agencies, to develop certain strategies; requiring the
20 Department to report on the development of certain strategies on or before a certain
21 date each year; defining a certain term; providing for the application of certain
22 provisions of this Act; and generally relating to prohibitions on the distribution of
23 tobacco products to minors.

24 BY repealing and reenacting, with amendments,
25 Article – Business Regulation
26 Section 16–205
27 Annotated Code of Maryland
28 (2015 Replacement Volume and 2015 Supplement)

29 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Health – General
2 Section 24–307
3 Annotated Code of Maryland
4 (2015 Replacement Volume)

5 BY repealing and reenacting, with amendments,
6 Article – Tax – General
7 Section 2–107
8 Annotated Code of Maryland
9 (2010 Replacement Volume and 2015 Supplement)

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

12 **Article – Business Regulation**

13 16–205.

14 (a) The Comptroller shall issue an appropriate license to each applicant who
15 meets the requirements of this subtitle for a license to act as a manufacturer, storage
16 warehouse, subwholesaler, vending machine operator, or wholesaler.

17 (b) The clerk shall issue to each applicant who meets the requirements of this
18 subtitle a license to act as a retailer.

19 (c) **THE COMPTROLLER’S OFFICE SHALL PROVIDE TO THE PREVENTION
20 AND HEALTH PROMOTION ADMINISTRATION EACH YEAR THE NAME AND ADDRESS
21 OF EACH PERSON LICENSED UNDER THIS SECTION.**

22 **Article – Health – General**

23 **24–307.**

24 (A) (1) **THIS SECTION DOES NOT APPLY TO THE DISTRIBUTION OF A
25 COUPON THAT IS REDEEMABLE FOR A TOBACCO PRODUCT IF THE COUPON IS:**

26 (I) **CONTAINED IN A NEWSPAPER, A MAGAZINE, OR ANY OTHER
27 TYPE OF PUBLICATION IN WHICH THE COUPON IS INCIDENTAL TO THE PRIMARY
28 PURPOSE OF THE PUBLICATION; OR**

29 (II) **SENT THROUGH THE MAIL.**

30 (2) **THIS SECTION DOES NOT APPLY TO THE DISTRIBUTION OF A
31 TOBACCO PRODUCT OR TOBACCO PARAPHERNALIA TO A MINOR WHO IS ACTING**

1 SOLELY AS THE AGENT OF THE MINOR'S EMPLOYER IF THE EMPLOYER DISTRIBUTES
2 TOBACCO PRODUCTS OR TOBACCO PARAPHERNALIA FOR COMMERCIAL PURPOSES.

3 (B) A PERSON WHO DISTRIBUTES TOBACCO PRODUCTS FOR COMMERCIAL
4 PURPOSES, INCLUDING A PERSON LICENSED UNDER TITLE 16 OF THE BUSINESS
5 REGULATION ARTICLE, MAY NOT DISTRIBUTE TO A MINOR:

6 (1) A TOBACCO PRODUCT;

7 (2) TOBACCO PARAPHERNALIA; OR

8 (3) A COUPON REDEEMABLE FOR A TOBACCO PRODUCT.

9 (C) (1) A PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION IS
10 SUBJECT TO A CIVIL PENALTY NOT EXCEEDING:

11 (I) \$300 FOR A FIRST VIOLATION;

12 (II) \$1,000 FOR A SECOND VIOLATION OCCURRING WITHIN 24
13 MONTHS AFTER THE FIRST VIOLATION; AND

14 (III) \$3,000 FOR EACH SUBSEQUENT VIOLATION OCCURRING
15 WITHIN 24 MONTHS AFTER THE PRECEDING VIOLATION.

16 (2) THE LOCAL HEALTH DEPARTMENTS SHALL REPORT VIOLATIONS
17 OF SUBSECTION (B) OF THIS SECTION TO THE COMPTROLLER'S OFFICE.

18 (D) IN A PROSECUTION FOR A VIOLATION OF SUBSECTION (B) OF THIS
19 SECTION, IT IS A DEFENSE THAT THE DEFENDANT EXAMINED THE PURCHASER'S OR
20 RECIPIENT'S DRIVER'S LICENSE OR OTHER VALID IDENTIFICATION ISSUED BY AN
21 EMPLOYER, A GOVERNMENTAL UNIT, OR AN INSTITUTION OF HIGHER EDUCATION
22 THAT POSITIVELY IDENTIFIED THE PURCHASER OR RECIPIENT AS AT LEAST 18
23 YEARS OLD.

24 (E) (1) IN THIS SUBSECTION, "DESIGNEE" MEANS A RETIRED SWORN LAW
25 ENFORCEMENT OFFICER EMPLOYED BY A COUNTY HEALTH OFFICER OR AN
26 EMPLOYEE OF A LOCAL HEALTH DEPARTMENT TRAINED IN CIVIL ENFORCEMENT.

27 (2) A COUNTY HEALTH OFFICER OR A DESIGNEE OF A COUNTY
28 HEALTH OFFICER MAY ISSUE A CIVIL CITATION FOR A VIOLATION OF THIS SECTION.

29 (3) A CITATION ISSUED UNDER THIS SUBSECTION SHALL INCLUDE:

- 1 **(I) THE NAME AND ADDRESS OF THE PERSON CHARGED;**
- 2 **(II) THE NATURE OF THE VIOLATION;**
- 3 **(III) THE LOCATION AND TIME OF THE VIOLATION;**
- 4 **(IV) THE AMOUNT OF THE CIVIL PENALTY;**
- 5 **(V) THE MANNER, LOCATION, AND TIME IN WHICH THE CIVIL**
6 **PENALTY MAY BE PAID;**
- 7 **(VI) A NOTICE STATING THE PERSON’S RIGHT TO ELECT TO**
8 **STAND TRIAL FOR THE VIOLATION; AND**
- 9 **(VII) A WARNING THAT FAILURE TO PAY THE CIVIL PENALTY OR**
10 **TO CONTEST LIABILITY IN A TIMELY MANNER IN ACCORDANCE WITH THE CITATION:**
- 11 **1. IS AN ADMISSION OF LIABILITY; AND**
- 12 **2. MAY RESULT IN ENTRY OF A DEFAULT JUDGMENT**
13 **THAT MAY INCLUDE THE CIVIL PENALTY, COURT COSTS, AND ADMINISTRATIVE**
14 **EXPENSES.**
- 15 **(4) THE COUNTY HEALTH OFFICER OR DESIGNEE SHALL RETAIN A**
16 **COPY OF THE CITATION ISSUED UNDER THIS SUBSECTION.**
- 17 **(5) (I) A PERSON WHO RECEIVES A CITATION FROM A COUNTY**
18 **HEALTH OFFICER OR DESIGNEE UNDER THIS SUBSECTION MAY ELECT TO STAND**
19 **TRIAL FOR THE VIOLATION BY FILING A NOTICE OF INTENTION TO STAND TRIAL**
20 **WITH THE COUNTY HEALTH OFFICER OR DESIGNEE AT LEAST 5 DAYS BEFORE THE**
21 **DATE SET IN THE CITATION FOR THE PAYMENT OF THE CIVIL PENALTY.**
- 22 **(II) AFTER RECEIVING A NOTICE OF INTENTION TO STAND**
23 **TRIAL UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COUNTY HEALTH**
24 **OFFICER OR DESIGNEE SHALL FORWARD THE NOTICE AND A COPY OF THE CITATION**
25 **TO THE DISTRICT COURT.**
- 26 **(6) (I) AFTER RECEIVING A CITATION AND NOTICE UNDER THIS**
27 **SUBSECTION, THE DISTRICT COURT SHALL SCHEDULE THE CASE FOR TRIAL AND**
28 **NOTIFY THE DEFENDANT OF THE TRIAL DATE.**
- 29 **(II) IN A PROCEEDING BEFORE THE DISTRICT COURT, A**
30 **VIOLATION OF THIS SECTION SHALL BE PROSECUTED IN THE SAME MANNER AND TO**

1 THE SAME EXTENT AS A MUNICIPAL INFRACTION UNDER §§ 6-108 THROUGH 6-115
2 OF THE LOCAL GOVERNMENT ARTICLE.

3 (7) THE DISTRICT COURT SHALL REMIT ANY PENALTIES COLLECTED
4 FOR A VIOLATION OF SUBSECTION (B) OF THIS SECTION TO THE COUNTY IN WHICH
5 THE VIOLATION OCCURRED.

6 (8) ADJUDICATION OF A VIOLATION OF SUBSECTION (B) OF THIS
7 SECTION IS NOT A CRIMINAL CONVICTION FOR ANY PURPOSE.

8 (F) (1) THE DEPARTMENT HEALTH AND MENTAL HYGIENE, IN
9 COLLABORATION AND CONSULTATION WITH THE OFFICE OF THE COMPTROLLER,
10 LOCAL HEALTH DEPARTMENTS, AND LOCAL LAW ENFORCEMENT AGENCIES, SHALL
11 DEVELOP ONGOING STRATEGIES FOR ENFORCEMENT OF LAWS PROHIBITING THE
12 SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS.

13 (2) ON OR BEFORE OCTOBER 1 EACH YEAR, THE DEPARTMENT SHALL
14 REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE
15 STATE GOVERNMENT ARTICLE, ON THE DEVELOPMENT OF ENFORCEMENT
16 STRATEGIES REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

17 Article – Tax – General

18 2-107.

19 (a) Authorized employees of the Field Enforcement Bureau of the Comptroller's
20 Office:

21 (1) shall be individuals who are sworn police officers; and

22 (2) have all the powers, duties, and responsibilities of a peace officer for the
23 purpose of enforcing the laws pertaining to:

24 (i) alcoholic beverage tax;

25 (ii) tobacco tax;

26 (iii) motor fuel tax;

27 (iv) motor carrier tax;

28 (v) motor fuel and lubricants; and

29 (vi) transient vendors within the meaning of Subtitle 20A of Title 17
30 of the Business Regulation Article.

1 (b) (1) The Department of State Police shall help the Field Enforcement
2 Bureau in enforcing the motor carrier tax, motor fuel tax and motor fuel and lubricants
3 laws.

4 (2) The Comptroller shall pay the salaries and expenses of all Department
5 of State Police staff assigned to the Field Enforcement Bureau.

6 (c) (1) (i) Except for the Sheriff, constables and bailiffs of Baltimore
7 County, each law enforcement officer shall enforce the alcoholic beverage tax and tobacco
8 tax laws.

9 (ii) A State's Attorney or other prosecutor may prosecute alleged
10 violations of the alcoholic beverage tax or tobacco tax laws.

11 (2) The Field Enforcement Bureau:

12 (i) shall advise a State's Attorney and law enforcement officers
13 about enforcement problems; and

14 (ii) otherwise may work cooperatively with law enforcement officers
15 and prosecutors to carry out the duties of the unit.

16 (3) This subsection does not restrict the appropriation of money by a
17 political subdivision of the State to aid in the enforcement of the alcoholic beverage tax and
18 tobacco tax laws.

19 (d) (1) Each unit of the State government shall cooperate with the
20 Comptroller's Office by making available, on request, any information in the unit's
21 possession as may be of assistance in the administration and enforcement of the motor
22 carrier tax, motor fuel tax, and motor fuel and lubricants laws.

23 (2) The Field Enforcement Bureau shall cooperate with and help the
24 federal government, other states, and local governments and law enforcement personnel of
25 those jurisdictions to enforce the motor carrier tax, motor fuel tax, and motor fuel and
26 lubricants laws.

27 **(3) ON OR BEFORE OCTOBER 1 EACH YEAR, THE COMPTROLLER'S**
28 **OFFICE SHALL REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH §**
29 **2-1246 OF THE STATE GOVERNMENT ARTICLE, ON:**

30 **(I) THE AGGREGATE NUMBER OF LICENSED TOBACCO**
31 **RETAILERS THAT COMMITTED A VIOLATION OF A LAW PROHIBITING THE**
32 **DISTRIBUTION OF TOBACCO PRODUCTS TO A MINOR DURING THE REPORTING**
33 **PERIOD;**

1 **(II) THE NUMBER OF PRIOR VIOLATIONS FOR LICENSED**
2 **TOBACCO RETAILERS THAT COMMITTED A VIOLATION DURING THE REPORTING**
3 **PERIOD; AND**

4 **(III) THE SUBSEQUENT ACTION TAKEN BY THE COMPTROLLER'S**
5 **OFFICE AGAINST EACH VIOLATOR AND, FOR EACH ACTION TAKEN, THE NUMBER OF**
6 **VIOLATIONS COMMITTED BY THE VIOLATOR.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2016.