

# HOUSE BILL 1504

J1, C2

6lr2023

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By: Delegates Rosenberg and Waldstreicher, Waldstreicher, Angel, Barron, Bromwell, Hammen, Hayes, Hill, Kelly, Krebs, Morhaim, Oaks, Pena-Melnyk, Pendergrass, Sample-Hughes, West, and K. Young

Introduced and read first time: February 12, 2016

Assigned to: Economic Matters and Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 24, 2016

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## CHAPTER \_\_\_\_\_

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 of this Act; and generally relating to prohibitions on the distribution of tobacco  
2 products to minors.

3 BY repealing and reenacting, with amendments,  
4 Article – Business Regulation  
5 Section 16–205  
6 Annotated Code of Maryland  
7 (2015 Replacement Volume and 2015 Supplement)

8 BY repealing and reenacting, without amendments,  
9 Article – Criminal Law  
10 Section 10–107 and 10–108  
11 Annotated Code of Maryland  
12 (2012 Replacement Volume and 2015 Supplement)

13 BY adding to  
14 Article – Health – General  
15 Section 24–307  
16 Annotated Code of Maryland  
17 (2015 Replacement Volume)

18 BY repealing and reenacting, with amendments,  
19 Article – Tax – General  
20 Section 2–107  
21 Annotated Code of Maryland  
22 (2010 Replacement Volume and 2015 Supplement)

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

25 **Article – Business Regulation**

26 16–205.

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

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

32 (c) **THE COMPTROLLER’S OFFICE SHALL PROVIDE TO THE PREVENTION**  
33 **AND HEALTH PROMOTION ADMINISTRATION EACH YEAR THE NAME AND ADDRESS**  
34 **OF EACH PERSON LICENSED UNDER SUBSECTION (B) OF THIS SECTION.**

35 **Article – Criminal Law**

1 10-107.

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

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

6 (2) sent through the mail.

7 (b) (1) This subsection does not apply to the distribution of a tobacco product  
8 or tobacco paraphernalia to a minor who is acting solely as the agent of the minor's  
9 employer if the employer distributes tobacco products or tobacco paraphernalia for  
10 commercial purposes.

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

14 (i) a tobacco product;

15 (ii) tobacco paraphernalia; or

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

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

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

19 (2) distribute tobacco paraphernalia to a minor.

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

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

26 (1) \$300 for a first violation;

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

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



1           **(2) THIS SECTION DOES NOT APPLY TO THE DISTRIBUTION OF A**  
2 **TOBACCO PRODUCT OR TOBACCO PARAPHERNALIA TO A MINOR WHO IS ACTING**  
3 **SOLELY AS THE AGENT OF THE MINOR’S EMPLOYER IF THE EMPLOYER DISTRIBUTES**  
4 **TOBACCO PRODUCTS OR TOBACCO PARAPHERNALIA FOR COMMERCIAL PURPOSES.**

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

8           **(1) A TOBACCO PRODUCT;**

9           **(2) TOBACCO PARAPHERNALIA; OR**

10          **(3) A COUPON REDEEMABLE FOR A TOBACCO PRODUCT.**

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

13                   **(I) \$300 FOR A FIRST VIOLATION;**

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

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

18          **(2) THE LOCAL HEALTH DEPARTMENTS SHALL REPORT VIOLATIONS**  
19 **OF SUBSECTION (B) OF THIS SECTION TO THE COMPTROLLER’S OFFICE.**

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

26          **(E) (1) IN THIS SUBSECTION, “DESIGNEE” MEANS A RETIRED SWORN LAW**  
27 **ENFORCEMENT OFFICER EMPLOYED BY A COUNTY HEALTH OFFICER OR AN**  
28 **EMPLOYEE OF A LOCAL HEALTH DEPARTMENT TRAINED IN CIVIL ENFORCEMENT.**

29          **(2) A COUNTY HEALTH OFFICER OR A DESIGNEE OF A COUNTY**  
30 **HEALTH OFFICER MAY ISSUE A CIVIL CITATION FOR A VIOLATION OF SUBSECTION**  
31 **(B) OF THIS SECTION.**

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

2                   **(I) THE NAME AND ADDRESS OF THE PERSON CHARGED;**

3                   **(II) THE NATURE OF THE VIOLATION;**

4                   **(III) THE LOCATION AND TIME OF THE VIOLATION;**

5                   **(IV) THE AMOUNT OF THE CIVIL PENALTY;**

6                   **(V) THE MANNER, LOCATION, AND TIME IN WHICH THE CIVIL**  
7 **PENALTY MAY BE PAID;**

8                   **(VI) A NOTICE STATING THE PERSON'S RIGHT TO ELECT TO**  
9 **STAND TRIAL FOR THE VIOLATION; AND**

10                   **(VII) A WARNING THAT FAILURE TO PAY THE CIVIL PENALTY OR**  
11 **TO CONTEST LIABILITY IN A TIMELY MANNER IN ACCORDANCE WITH THE CITATION:**

12                           **1. IS AN ADMISSION OF LIABILITY; AND**

13                           **2. MAY RESULT IN ENTRY OF A DEFAULT JUDGMENT**  
14 **THAT MAY INCLUDE THE CIVIL PENALTY, COURT COSTS, AND ADMINISTRATIVE**  
15 **EXPENSES.**

16           **(4) THE COUNTY HEALTH OFFICER OR DESIGNEE SHALL RETAIN A**  
17 **COPY OF THE CITATION ISSUED UNDER THIS SUBSECTION.**

18           **(5) (I) A PERSON WHO RECEIVES A CITATION FROM A COUNTY**  
19 **HEALTH OFFICER OR DESIGNEE UNDER THIS SUBSECTION MAY ELECT TO STAND**  
20 **TRIAL FOR THE VIOLATION BY FILING A NOTICE OF INTENTION TO STAND TRIAL**  
21 **WITH THE COUNTY HEALTH OFFICER OR DESIGNEE AT LEAST 5 DAYS BEFORE THE**  
22 **DATE SET IN THE CITATION FOR THE PAYMENT OF THE CIVIL PENALTY.**

23                   **(II) AFTER RECEIVING A NOTICE OF INTENTION TO STAND**  
24 **TRIAL UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COUNTY HEALTH**  
25 **OFFICER OR DESIGNEE SHALL FORWARD THE NOTICE AND A COPY OF THE CITATION**  
26 **TO THE DISTRICT COURT.**

27           **(6) (I) AFTER RECEIVING A CITATION AND NOTICE UNDER THIS**  
28 **SUBSECTION, THE DISTRICT COURT SHALL SCHEDULE THE CASE FOR TRIAL AND**  
29 **NOTIFY THE DEFENDANT OF THE TRIAL DATE.**

1                   (II) IN A PROCEEDING BEFORE THE DISTRICT COURT, A  
 2 VIOLATION OF SUBSECTION (B) OF THIS SECTION SHALL BE ~~PROSECUTED~~ HANDLED  
 3 IN THE SAME MANNER ~~AND TO THE SAME EXTENT~~ AS A MUNICIPAL INFRACTION  
 4 UNDER §§ 6-108 THROUGH 6-115 OF THE LOCAL GOVERNMENT ARTICLE.

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

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

10                   (F) (1) THE DEPARTMENT HEALTH AND MENTAL HYGIENE, IN  
 11 COLLABORATION AND CONSULTATION WITH THE OFFICE OF THE COMPTROLLER,  
 12 LOCAL HEALTH DEPARTMENTS, AND LOCAL LAW ENFORCEMENT AGENCIES, SHALL  
 13 DEVELOP ONGOING STRATEGIES FOR ENFORCEMENT OF ~~LAWS PROHIBITING THE~~  
 14 ~~SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS~~ §§ 10-107 AND 10-108  
 15 OF THE CRIMINAL LAW ARTICLE.

16                   (2) ON OR BEFORE OCTOBER 1 EACH YEAR, THE DEPARTMENT SHALL  
 17 REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE  
 18 STATE GOVERNMENT ARTICLE, ON:

19                   (I) ~~THE~~ THE DEVELOPMENT OF ENFORCEMENT STRATEGIES  
 20 REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION; AND

21                   (II) TRAINING AND ASSISTANCE TO TOBACCO RETAILERS TO  
 22 IMPROVE COMPLIANCE WITH § 10-107 OF THE CRIMINAL LAW ARTICLE.

23   Article – Tax – General

24 2-107.

25                   (a) Authorized employees of the Field Enforcement Bureau of the Comptroller's  
 26 Office:

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

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

30                   (i) alcoholic beverage tax;

31                   (ii) tobacco tax;

1 (iii) motor fuel tax;

2 (iv) motor carrier tax;

3 (v) motor fuel and lubricants; and

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

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

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

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

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

16 (2) The Field Enforcement Bureau:

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

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

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

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

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



1           **~~(3)~~ (E)** ON OR BEFORE OCTOBER 1 EACH YEAR, THE  
2 COMPROLLER’S OFFICE SHALL REPORT TO THE GENERAL ASSEMBLY, IN  
3 ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, ON:

4           **~~(H)~~ (1)** THE AGGREGATE NUMBER OF LICENSED TOBACCO  
5 RETAILERS THAT COMMITTED A VIOLATION OF ~~A LAW PROHIBITING THE~~  
6 ~~DISTRIBUTION OF TOBACCO PRODUCTS TO A MINOR~~ § 10-107 OF THE CRIMINAL  
7 LAW ARTICLE, AND THE AGGREGATE NUMBER OF MINORS WHO COMMITTED A  
8 VIOLATION OF § 10-108 OF THE CRIMINAL LAW ARTICLE, DURING THE REPORTING  
9 PERIOD;

10           **~~(H)~~ (2)** THE NUMBER OF PRIOR VIOLATIONS FOR LICENSED  
11 TOBACCO RETAILERS AND MINORS THAT COMMITTED A VIOLATION DURING THE  
12 REPORTING PERIOD; AND

13           **~~(H)~~ (3)** THE SUBSEQUENT ACTION TAKEN BY THE  
14 COMPROLLER’S OFFICE AGAINST EACH VIOLATOR AND, FOR EACH ACTION TAKEN,  
15 THE NUMBER OF VIOLATIONS COMMITTED BY THE VIOLATOR.

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

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.