

SENATE BILL 325

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4r0603

By: **Senators Forehand, Benson, Currie, Jones–Rodwell, Kelley, Madaleno,
and Montgomery**

Introduced and read first time: January 17, 2014

Assigned to: Judicial Proceedings

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)

26 BY repealing and reenacting, with amendments,
27 Article – Health – General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 13–1015
2 Annotated Code of Maryland
3 (2009 Replacement Volume and 2013 Supplement)

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

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

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

16 **Article – Business Regulation**

17 16–3A–02.

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

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

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

26 **Article – Criminal Law**

27 10–107.

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

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

32 (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.

32 10-108.

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

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

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

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

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

11 (i) is falsified; or

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

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

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

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

21 **Article – Health – General**

22 13-1015.

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

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

29 (2) Media campaigns educating the public about the dangers of
30 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

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

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

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

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

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

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

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

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

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

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

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

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

19 **Article – State Finance and Procurement**

20 7–317.

21 (a) There is a Cigarette Restitution Fund.

22 (b) (1) The Fund is a continuing, nonlapsing fund that is not subject to §
23 7–302 of this subtitle.

24 (2) There shall be credited to the Fund all revenues consisting of funds
25 received by the State from any source resulting, directly or indirectly, from any
26 judgment against or settlement with tobacco product manufacturers, tobacco research
27 associations, or any other person in the tobacco industry relating to litigation,
28 administrative proceedings, or any other claims made or prosecuted by the State to
29 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
31 Maryland with an emphasis on alternative crop uses for agricultural land now used for
32 growing tobacco;

- 1 3. public and school education campaigns to decrease
2 tobacco use with initial emphasis on areas targeted by tobacco manufacturers in
3 marketing and promoting cigarette and tobacco products;
 - 4 4. smoking cessation programs;
 - 5 5. enforcement of the laws regarding tobacco sales;
 - 6 6. the purposes of the Maryland Health Care
7 Foundation under Title 20, Subtitle 5 of the Health – General Article;
 - 8 7. primary health care in rural areas of the State and
9 areas targeted by tobacco manufacturers in marketing and promoting cigarette and
10 tobacco products;
 - 11 8. prevention, treatment, and research concerning
12 cancer, heart disease, lung disease, tobacco product use, and tobacco control, including
13 operating costs and related capital projects;
 - 14 9. substance abuse treatment and prevention programs;
15 and
 - 16 10. any other public purpose.
- 17 (2) The provisions of this subsection may not be construed to affect the
18 Governor’s powers with respect to a request for an appropriation in the annual budget
19 bill.
- 20 (g) (1) Amounts may only be expended from the Fund through
21 appropriations in the State budget bill as provided in this subsection.
- 22 (2) The Governor shall include in the annual budget bill
23 appropriations from the Fund equivalent to the lesser of \$100,000,000 or 90% of the
24 funds estimated to be available to the Fund in the fiscal year for which the
25 appropriations are made.
- 26 (3) For each fiscal year for which appropriations are made, at least
27 50% of the appropriations shall be made for those purposes enumerated in subsection
28 (f)(1)(i), (ii), and (iii) 1 through 9 of this section subject to the requirement of subsection
29 (e)(2) of this section.
- 30 (4) For each fiscal year for which appropriations are made, at least
31 30% of the appropriations shall be made for the purposes of the Maryland Medical
32 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.