

HOUSE BILL 185

J1, C2

(71r0465)

ENROLLED BILL

— *Economic Matters and Health and Government Operations/Finance* —

Introduced by **Delegates Rosenberg and Waldstreicher**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

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 certain persons from distributing certain tobacco products,
5 certain paraphernalia, or certain coupons to a minor, with certain exceptions;
6 providing that a person who violates a certain provision of this Act is subject to
7 certain civil penalties; establishing a certain defense in a prosecution for a certain
8 violation; providing that a county health officer, or a designee of a county health
9 officer, may issue a certain civil citation for a violation of a certain provision of this
10 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; providing that a conviction for a violation of
15 certain provisions of law precludes a proceeding for a certain civil penalty arising out

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.

Italics indicate opposite chamber/conference committee amendments.



of the same violation; providing that enforcement of a certain civil penalty precludes a prosecution for a violation of certain provisions of law arising out of the same violation; requiring the Comptroller's Office to provide certain information to the Prevention and Health Promotion Administration each year; requiring the Comptroller's Office to provide certain information to the General Assembly on or before a certain date each year; requiring local health departments to report certain violations to the Comptroller's Office; requiring the Department of Health and Mental Hygiene, in collaboration and consultation with certain agencies, to develop certain strategies; requiring the Department to report on the development of certain strategies and certain training and assistance on or before a certain date each year; defining a certain term; providing for the application of certain provisions of this Act; and generally relating to prohibitions on the distribution of tobacco products to minors.

BY repealing and reenacting, with amendments,
Article – Business Regulation
Section 16–205
Annotated Code of Maryland
(2015 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 10–107
Annotated Code of Maryland
(2012 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, without amendments,
Article – Criminal Law
Section ~~10–107~~ and 10–108
Annotated Code of Maryland
(2012 Replacement Volume and 2016 Supplement)

BY adding to
Article – Health – General
Section 24–307
Annotated Code of Maryland
(2015 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 2–107
Annotated Code of Maryland
(2010 Replacement Volume and 2016 Supplement)

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

Article – Business Regulation

16–205.

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

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

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

Article – Criminal Law

10–107.

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

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

(2) sent through the mail.

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

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

(i) a tobacco product;

(ii) tobacco paraphernalia; or

(iii) a coupon redeemable for a tobacco product.

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

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

(2) distribute tobacco paraphernalia to a minor.

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

(e) **(1)** A person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding:

~~(1)~~ **(I)** \$300 for a first violation;

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

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

(2) ENFORCEMENT OF A CIVIL PENALTY FOR A VIOLATION OF THIS SECTION PRECLUDES A PROSECUTION FOR A VIOLATION OF § 10-107 OF THE CRIMINAL LAW ARTICLE ARISING OUT OF THE SAME VIOLATION.

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

10-108.

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

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

(c) A minor may not:

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

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

(i) is falsified; or

(ii) identifies an individual other than the minor.

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

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

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

Article – Health – General

24-307.

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

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

(II) SENT THROUGH THE MAIL.

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

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

(1) A TOBACCO PRODUCT;

(2) TOBACCO PARAPHERNALIA; OR

(3) A COUPON REDEEMABLE FOR A TOBACCO PRODUCT.

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

(I) \$300 FOR A FIRST VIOLATION;

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

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

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

(3) A CONVICTION FOR A VIOLATION OF THIS SECTION PRECLUDES A PROCEEDING FOR A CIVIL PENALTY UNDER § 24-307 OF THE HEALTH – GENERAL ARTICLE ARISING OUT OF THE SAME VIOLATION.

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

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

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

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

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

(II) THE NATURE OF THE VIOLATION;

(III) THE LOCATION AND TIME OF THE VIOLATION;

(IV) THE AMOUNT OF THE CIVIL PENALTY;

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

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

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

1 1. IS AN ADMISSION OF LIABILITY; AND

2 2. MAY RESULT IN ENTRY OF A DEFAULT JUDGMENT
3 THAT MAY INCLUDE THE CIVIL PENALTY, COURT COSTS, AND ADMINISTRATIVE
4 EXPENSES.

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

7 (5) (I) A PERSON WHO RECEIVES A CITATION FROM A COUNTY
8 HEALTH OFFICER OR DESIGNEE UNDER THIS SUBSECTION MAY ELECT TO STAND
9 TRIAL FOR THE VIOLATION BY FILING A NOTICE OF INTENTION TO STAND TRIAL
10 WITH THE COUNTY HEALTH OFFICER OR DESIGNEE AT LEAST 5 DAYS BEFORE THE
11 DATE SET IN THE CITATION FOR THE PAYMENT OF THE CIVIL PENALTY.

12 (II) AFTER RECEIVING A NOTICE OF INTENTION TO STAND
13 TRIAL UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COUNTY HEALTH
14 OFFICER OR DESIGNEE SHALL FORWARD THE NOTICE AND A COPY OF THE CITATION
15 TO THE DISTRICT COURT.

16 (6) (I) AFTER RECEIVING A CITATION AND NOTICE UNDER THIS
17 SUBSECTION, THE DISTRICT COURT SHALL SCHEDULE THE CASE FOR TRIAL AND
18 NOTIFY THE DEFENDANT OF THE TRIAL DATE.

19 (II) IN A PROCEEDING BEFORE THE DISTRICT COURT, A
20 VIOLATION OF SUBSECTION (B) OF THIS SECTION SHALL BE HANDLED IN THE SAME
21 MANNER AS A MUNICIPAL INFRACTION UNDER §§ 6-108 THROUGH 6-115 OF THE
22 LOCAL GOVERNMENT ARTICLE.

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

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

28 (F) (1) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, IN
29 COLLABORATION AND CONSULTATION WITH THE OFFICE OF THE COMPTROLLER,
30 LOCAL HEALTH DEPARTMENTS, AND LOCAL LAW ENFORCEMENT AGENCIES, SHALL
31 DEVELOP ONGOING STRATEGIES FOR ENFORCEMENT OF §§ 10-107 AND 10-108 OF
32 THE CRIMINAL LAW ARTICLE.

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

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

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

Article – Tax – General

2-107.

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

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

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

(i) alcoholic beverage tax;

(ii) tobacco tax;

(iii) motor fuel tax;

(iv) motor carrier tax;

(v) motor fuel and lubricants; and

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

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

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

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

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

(2) The Field Enforcement Bureau:

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

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

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

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

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

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

(1) THE AGGREGATE NUMBER OF LICENSED TOBACCO RETAILERS THAT COMMITTED A VIOLATION OF § 10-107 OF THE CRIMINAL LAW ARTICLE AND THE AGGREGATE NUMBER OF MINORS WHO COMMITTED A VIOLATION OF § 10-108 OF THE CRIMINAL LAW ARTICLE DURING THE REPORTING PERIOD;

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

(3) THE SUBSEQUENT ACTION TAKEN BY THE COMPTROLLER'S OFFICE AGAINST EACH VIOLATOR AND, FOR EACH ACTION TAKEN, THE NUMBER OF VIOLATIONS COMMITTED BY THE VIOLATOR.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2017.