Sec. 24-9B. Availability of Tobacco Products to Minors.

(a) In order to reduce the accessibility of tobacco products to minors, a person must not install or maintain a vending machine which dispenses a tobacco product anywhere in the County except inside a private club that is licensed to serve alcoholic beverages. A vending machine located inside any private club must not be placed in any restroom, coatroom, unmonitored hallway, outerwaiting area, or other unattended place.

(b) As used in this Section:

(1) minor means any person under 18 years old;

(2) tobacco product means any cigarette or cigar containing tobacco, pipe tobacco, smokeless or chewing tobacco, and any other product that contains tobacco; and

(3) vending machine means any electronic, mechanical, or other device that dispenses a tobacco product.

(c) Any violation of this Section is a Class A violation. Both the owner of the vending machine and the owner of the business or residence in which the machine is located are responsible for complying with this Section. The Health and Human Services Department and any other agency designated by the County Executive must enforce this Section. (CY 1991 L.M.C., ch. 24, § 1; 1992 L.M.C., ch. 2, § 1; 1995 L.M.C., ch. 13, § 1.)

Editor’s note—Section 24-9B was declared invalid in Allied Vending, Inc. et. al. v. Montgomery County, Civil No. 80353 (Cir. Ct. Montgomery County, 4/19/93). In Allied Vending, Inc. v. City of Bowie, 332 Md. 279, 631 A.2d 77 (1993) the court held that the State cigarette licensing scheme has preempted local laws regulating the location of cigarette vending machines.

1995 L.M.C., ch. 13, § 5, reads as follows: “Sec. 5. A regulation that implements a function assigned to the Department of Health and Human Services by 1995 L.M.C., ch. 13, continues in effect but is amended to the extent necessary to provide that the regulation is administered by the Director of the Department of Health and Human Services.”

Sec. 24-9C. Distribution of tobacco products to minors.

(a) Definitions. In this Section the following words have the meanings indicated.

(1) Tobacco product means any substance containing tobacco, including cigarettes, cigars, smoking tobacco, snuff, or smokeless tobacco.

(2) Distribute means to:

(A) give away, sell, deliver, dispense, or issue;

(B) offer to give away, sell, deliver, dispense, or issue; or

(C) cause or hire any person to give away, sell, deliver, dispense, or issue or offer to give away,
sell, deliver, dispense, or issue.

(b) Unlawful distribution.

(1) A person engaged in the business of selling or otherwise distributing tobacco products for commercial purposes must not:

   (i) distribute any tobacco product to a minor, unless the minor is acting solely as the agent of the minor’s employer who is engaged in the business of distributing tobacco products;

   (ii) distribute cigarette rolling papers to a minor; or

   (iii) distribute to a minor a coupon redeemable for any tobacco product.

(2) A person, who is not a person described under paragraph (b)(1), must not:

   (i) buy for or sell to a minor any tobacco product; or

   (ii) deliver or sell to a minor cigarette rolling papers.

(c) Subsection (b) does not apply to the distribution of a coupon which is redeemable for any tobacco product when the coupon is 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 sent through the mail.

(d) A person has not violated this Section if:

   (1) that person examined a driver’s license or another valid identification issued by an employer, a government entity, or an institution of higher education; and

   (2) that license or other identification positively identified the buyer or recipient of a tobacco product as at least 18 years old.

(e) If a minor bought a tobacco product from a vending machine, this Section does not apply to the owner of the vending machine or any other person with control over the vending machine.

(f) A person who violates this Section is liable for a class A civil violation. (1998 L.M.C., ch. 15, § 1.)

Editor’s note—County Council Resolution No. 13-1410 adopted 1998 L.M.C., ch. 15 (Bill No. 13-98) as a Board of Health Regulation.