



**Bill 42-23 Health and Sanitation – Menstrual Products in Public Restrooms – Required**  
**Montgomery County Council**  
**December 12, 2023**

**Position: Unfavorable**

**Background:** Bill 42-23 would require many “places of public accommodation” to provide menstrual products to patrons for free.

**Comments:** The Maryland Retailers Alliance (MRA) has serious concerns about the potential impact of Bill 42-23 on private businesses operating in Montgomery County. The lack of specificity in the bill, the fines associated with a Class A violation, and the overall cost to businesses would have far-reaching effects on the county’s retailers and other businesses. While some jurisdictions require menstrual products to be provided in school systems, no county or state in the country has passed a mandate to require private businesses to provide menstrual items to the public at no cost.

The official description of Bill 42-23 indicates that the law would apply only to “places of public accommodation that, by law, are required to provide restroom facilities to their customers or the general public”. The list of “places of public accommodation” that follows in the bill’s description is expansive and includes a variety of locations that may or may not be impacted by the proposal. The bill itself places the language around the legal requirement to provide a restroom within the definition of “public restroom” and neglects to specify exactly which places of public accommodation are held to that legal requirement. County staff indicated to MRA that the type of license held by a business determines whether a public restroom is required by law, but the impacted licenses are not specified in the legislation or indicated online in licensing information provided by the State Licensing Bureau or the Office of the Comptroller. The Maryland Health-General Code Ann. § 21-325 requires “food service facilities” to provide a public restroom to patrons, and Health-General Code Ann. § 21-301 defines “food service facilities” as 1) a place where food or drink is prepared for sale or service on the premises or elsewhere; or 2) any operation where food is served to or provided for the public, with or without charge. This would apply to any full-service grocery store with a prepared food section and would impact any retailer, shopping center, or venue of any kind with a café counter, snack bar, or food court area. MRA members expressed concerns about the potential for the definition of “food service facility” to be interpreted loosely enough to apply to any retailer that sells food products, including small businesses specializing in items like high quality olive oil; pharmacies, department stores, and boutiques that sell a small variety of food products; and even retailers like liquor and hardware stores that sell snacks and beverages at the check-out area. The lack of clarity in the bill and in public information for business owners regarding the specific venues or licenses that would be impacted by the proposal will result in confusion among members of the retail community about its application and will present a serious issue for compliance expectations.

The lack of clarity in the bill continues in the language establishing the requirement to provide menstrual products. While MRA appreciates the intent of the sponsor to allow flexibility for businesses by not requiring that a variety of menstrual products be provided and not specifying that a dispenser is explicitly required, that lack of specification has resulted in questions about compliance from our members. Businesses with either multi-stall restrooms designated by gender or multiple single-toilet unisex restrooms would ostensibly be required to place and maintain a dispenser or container of menstrual products in every single restroom. It is unclear whether an alternative action like placing a dispenser or display of products in a common hallway between restrooms would be within compliance. Retailers have shared estimated costs of at least \$750 per apparatus for the initial purchase, installation, and stocking of product dispensers and would greatly benefit from the option to install one dispenser that is publicly available to all patrons rather than outfitting multiple restrooms, particularly given that public restrooms are not uniform in design and may not have counter or shelf space for displaying items in a basket or container.

Businesses have also highlighted issues around the cost of compliance in conjunction with the potential for abuse and destruction of dispensers or product displays. Retailers have very real concerns about the opportunity for individuals who are not experiencing “period poverty” or a lack of access to menstrual hygiene products to abuse the dispensing system by taking more items than they need and increasing the cost of compliance. A requirement to place menstrual products in male-designated restrooms also carries a higher chance of destruction of dispensers and menstrual hygiene items due to individual patrons’ personal discriminations and actions. The risk of facing a Class A violation and associated fines should a business find itself under inspection during a time that a dispenser has been tampered with or emptied without need, on top of the cost of maintenance or replacement of a dispenser, basket, or display shelf and missing products, could become very costly for retailers.

The sponsor of the bill has been clear that he wishes to address period poverty in the community, and it has also been indicated that public availability of menstrual products for all people at any time, regardless of personal access or need, should be addressed by Bill 42-23 as a public health issue. The business community is sensitive to the needs of people who menstruate and understands that emergencies can arise, but it would be most appropriate that any mandates to provide products at no cost apply only to public spaces maintained and funded by the County or municipal governments. As noted above, there is no precedent in the United States for the business community in an entire county or state to provide personal hygiene products to any and all members of the public for free, and fewer than ten cities have passed similar proposals at this time. Passage of Bill 42-23 would result in serious questions about the expectation for private businesses to address and pay for the personal health and hygiene needs of the public. Should the County Council decide to move forward with this proposal, MRA would strongly urge that it be amended to only apply to publicly-owned and maintained spaces.

Thank you for your consideration.