

HOUSE BILL 1237

Q7, C2

9lr2725
CF SB 825

By: **Delegates Hixson, Barnes, Barve, Bromwell, Frush, Gaines, Hecht, Ivey, Proctor, Ross, and F. Turner**

Introduced and read first time: February 13, 2009

Assigned to: Economic Matters and Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Moist Snuff – Taxation and Regulation**

3 FOR the purpose of altering the tobacco tax rate for certain tobacco intended to be
4 placed in the oral cavity; requiring that certain tobacco tax revenues be
5 distributed to the Cigarette Restitution Fund for certain purposes; requiring
6 certain revenues to be appropriated for certain activities aimed at cancer
7 research; altering the information required to be stated in a tobacco tax return;
8 prohibiting the manufacturer of moist snuff from taking certain action relating
9 to advertising, marketing, distributing, giving away, promoting, or selling moist
10 snuff; prohibiting a manufacturer of moist snuff from sponsoring certain events,
11 teams, or venues; requiring the Department of Labor, Licensing, and Regulation
12 to adopt certain regulations; requiring a moist snuff manufacturer to designate
13 a certain person for the purpose of receiving certain notice from the Attorney
14 General; requiring the Attorney General to provide certain notice under certain
15 circumstances; prohibiting a moist snuff manufacturer from entering into
16 certain contracts or agreements; defining certain terms; and generally relating
17 to the taxation and regulation of moist snuff and moist snuff manufacturers.

18 BY repealing and reenacting, with amendments,
19 Article – State Finance and Procurement
20 Section 7–317(b) and (g)
21 Annotated Code of Maryland
22 (2006 Replacement Volume and 2008 Supplement)

23 BY adding to
24 Article – Tax – General
25 Section 2–1602.1 and 12–101(b–1)
26 Annotated Code of Maryland
27 (2004 Replacement Volume and 2008 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Tax – General
3 Section 2–1603, 12–105(b), and 12–202
4 Annotated Code of Maryland
5 (2004 Replacement Volume and 2008 Supplement)

6 BY adding to
7 Article – Business Regulation
8 Section 16–701 through 16–713 to be under the new subtitle “Subtitle 7. Moist
9 Snuff”
10 Annotated Code of Maryland
11 (2004 Replacement Volume and 2008 Supplement)

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

14 **Article – State Finance and Procurement**

15 7–317.

16 (b) (1) The Fund is a continuing, nonlapsing fund that is not subject to §
17 7–302 of this subtitle.

18 (2) There shall be credited to the Fund all revenues consisting of funds
19 received by the State from any source resulting, directly or indirectly, from any
20 judgment against or settlement with tobacco product manufacturers, tobacco research
21 associations, or any other person in the tobacco industry relating to litigation,
22 administrative proceedings, or any other claims made or prosecuted by the State to
23 recover damages for violations of State law.

24 (3) There shall be credited to the Fund all moneys collected under §
25 24–508 of the Health – General Article or § 5–608 of the Labor and Employment
26 Article.

27 **(4) THERE SHALL BE CREDITED TO THE FUND ALL MONEY**
28 **DISTRIBUTED TO THE FUND UNDER § 2–1602.1 OF THE TAX – GENERAL**
29 **ARTICLE.**

30 (g) (1) Amounts may only be expended from the Fund through
31 appropriations in the State budget bill as provided in this subsection.

32 (2) The Governor shall include in the annual budget bill
33 appropriations from the Fund equivalent to the lesser of \$100,000,000 or 90% of the
34 funds estimated to be available to the Fund in the fiscal year for which the
35 appropriations are made.

1 (3) For each fiscal year for which appropriations are made, at least
2 50% of the appropriations shall be made for those purposes enumerated in subsection
3 (f)(1)(i), (ii), and (iii) 1 through 9 of this section subject to the requirement of subsection
4 (e)(2) of this section.

5 (4) For each fiscal year for which appropriations are made, at least
6 30% of the appropriations shall be made for the purposes of the Maryland Medical
7 Assistance Program.

8 (5) For each fiscal year for which appropriations are made, 0.15% of
9 the Fund shall be appropriated for the purposes of enforcement of Title 16, Subtitle 5
10 of the Business Regulation Article.

11 **(6) FOR EACH FISCAL YEAR FOR WHICH APPROPRIATIONS ARE**
12 **MADE, THE TOBACCO TAX REVENUE COLLECTED FROM MOIST SNUFF**
13 **DISTRIBUTED TO THE FUND SHALL BE APPROPRIATED FOR ACTIVITIES AIMED**
14 **AT CANCER RESEARCH.**

15 ~~[(6)]~~ (7) Any additional appropriations, not subject to paragraph (3),
16 [paragraph] (4), [or paragraph] (5), **OR (6)** of this subsection, may be made for any
17 lawful purpose.

18 Article - Tax - General

19 2-1602.1.

20 **AFTER MAKING THE DISTRIBUTIONS REQUIRED UNDER §§ 2-1601 AND**
21 **2-1602 OF THIS SUBTITLE, THE COMPTROLLER SHALL DISTRIBUTE THE**
22 **REVENUE COLLECTED FROM THE TOBACCO TAX IMPOSED ON MOIST SNUFF**
23 **UNDER § 12-105(B)(2) OF THIS ARTICLE TO THE CIGARETTE RESTITUTION**
24 **FUND FOR THE PURPOSES SPECIFIED UNDER § 7-317(G)(6) OF THE STATE**
25 **FINANCE AND PROCUREMENT ARTICLE.**

26 2-1603.

27 After making the distributions required under §§ 2-1601 [and 2-1602]
28 **THROUGH 2-1602.1** of this subtitle, the Comptroller shall distribute the remaining
29 tobacco tax revenue to the General Fund of the State.

30 12-101.

31 **(B-1) (1) "MOIST SNUFF" MEANS ANY FINELY CUT, GROUND, OR**
32 **POWDERED TOBACCO THAT IS NOT INTENDED TO BE SMOKED.**

33 **(2) "MOIST SNUFF" DOES NOT INCLUDE ANY TOBACCO THAT IS**
34 **INTENDED TO BE PLACED IN THE NASAL CAVITY.**

1 12-105.

2 (b) (1) [The] **EXCEPT FOR MOIST SNUFF, THE** tobacco tax rate for other
3 tobacco products is 15% of the wholesale price of the tobacco products.

4 (2) **FOR MOIST SNUFF, THE TOBACCO TAX RATE IS 75 CENTS FOR**
5 **UP TO ONE OUNCE AND A PROPORTIONATE AMOUNT FOR EACH FRACTION OF AN**
6 **OUNCE IN EXCESS OF A WHOLE OUNCE OF NET WEIGHT AS LISTED BY THE**
7 **MANUFACTURER.**

8 12-202.

9 (a) A wholesaler shall complete and file with the Comptroller a tobacco tax
10 return:

11 (1) for cigarettes:

12 (i) on or before the 21st day of the month that follows the
13 month in which the wholesaler has the first possession, in the State, of unstamped
14 cigarettes for which tax stamps are required; and

15 (ii) if the Comptroller so specifies, by regulation, on other dates
16 for each month in which the wholesaler does not have the first possession of any
17 unstamped cigarettes in the State; and

18 (2) for other tobacco products, on the dates and for the periods that the
19 Comptroller specifies by regulation.

20 (b) Each return shall state the quantity of cigarettes, **THE NET WEIGHT OF**
21 **MOIST SNUFF AS LISTED BY THE MANUFACTURER**, or the wholesale price of other
22 tobacco products **OTHER THAN MOIST SNUFF** sold during the period that the return
23 covers.

24 **Article – Business Regulation**

25 **SUBTITLE 7. MOIST SNUFF.**

26 **16-701.**

27 (A) **IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
28 **INDICATED.**

29 (B) (1) **“APPAREL OR OTHER MERCHANDISE” MEANS ITEMS USED TO**
30 **ADVERTISE MOIST SNUFF.**

1 (2) **“APPAREL OR OTHER MERCHANDISE” DOES NOT INCLUDE:**

2 (I) **MOIST SNUFF; OR**

3 (II) **WRITTEN OR ELECTRONIC PUBLICATIONS.**

4 (C) **“MANUFACTURER” MEANS AN ENTITY THAT, DIRECTLY AND NOT**
5 **EXCLUSIVELY THROUGH AN AFFILIATE, MANUFACTURES MOIST SNUFF**
6 **INTENDED TO BE SOLD IN THE UNITED STATES.**

7 (D) **“MINOR” MEANS AN INDIVIDUAL UNDER THE AGE OF 18 YEARS.**

8 (E) (1) **“MOIST SNUFF” MEANS ANY FINELY CUT, GROUND, OR**
9 **POWDERED TOBACCO THAT IS NOT INTENDED TO BE SMOKED.**

10 (2) **“MOIST SNUFF” DOES NOT INCLUDE ANY TOBACCO THAT IS**
11 **INTENDED TO BE PLACED IN THE NASAL CAVITY.**

12 **16-702.**

13 (A) **A MANUFACTURER MAY NOT TAKE ANY ACTION:**

14 (1) **TO TARGET, DIRECTLY OR INDIRECTLY, MINORS IN THE**
15 **ADVERTISING, PROMOTION, OR MARKETING OF MOIST SNUFF; OR**

16 (2) **TO INITIATE, MAINTAIN, OR INCREASE THE INCIDENCE OF USE**
17 **OF MOIST SNUFF BY MINORS WITHIN THE STATE.**

18 (B) **A MANUFACTURER MAY NOT USE A CARTOON IN THE ADVERTISING,**
19 **LABELING, PACKAGING, OR PROMOTING OF MOIST SNUFF.**

20 **16-703.**

21 (A) **A MANUFACTURER MAY NOT SPONSOR:**

22 (1) **AN ATHLETIC EVENT BETWEEN OPPOSING TEAMS IN A**
23 **BASEBALL, BASKETBALL, FOOTBALL, HOCKEY, OR SOCCER LEAGUE;**

24 (2) **A CONCERT; OR**

25 (3) **AN EVENT IN WHICH:**

26 (I) **THE INTENDED AUDIENCE IS COMPRISED OF A**
27 **SIGNIFICANT PERCENTAGE OF MINORS; OR**

1 **(II) A PAID PARTICIPANT OR CONTESTANT IS A MINOR.**

2 **(B) (1) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION AND**
3 **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A MANUFACTURER MAY**
4 **SPONSOR, IN THE NAME OF THE CORPORATION THAT MANUFACTURES THE**
5 **MOIST SNUFF, AN ARTISTIC, ATHLETIC, MUSICAL, OR OTHER SOCIAL OR**
6 **CULTURAL EVENT, OR AN ENTRANT, PARTICIPANT, OR TEAM IN THE EVENT.**

7 **(2) A MANUFACTURER MAY NOT SPONSOR AN EVENT UNDER**
8 **PARAGRAPH (1) OF THIS SUBSECTION IF THE CORPORATE NAME INCLUDES A**
9 **BRAND NAME OF MOIST SNUFF.**

10 **(C) A MANUFACTURER MAY NOT ENTER INTO AN AGREEMENT FOR THE**
11 **NAMING RIGHTS, USING THE MOIST SNUFF BRAND NAME, OF A STADIUM OR**
12 **ARENA LOCATED WITHIN THE STATE.**

13 **(D) A MANUFACTURER MAY NOT ENTER INTO AN AGREEMENT OR**
14 **PROVIDE CONSIDERATION TO ANY BASEBALL, BASKETBALL, FOOTBALL,**
15 **HOCKEY, OR SOCCER LEAGUE OR A TEAM IN THE LEAGUE IN EXCHANGE FOR USE**
16 **OF A BRAND NAME.**

17 **(E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
18 **SUBSECTION, A MANUFACTURER MAY NOT ENTER AN AGREEMENT, REQUIRING**
19 **THE PAYMENT OF MONEY OR OTHER CONSIDERATION, TO USE AS THE BRAND**
20 **NAME OF ANY MOIST SNUFF:**

21 **(I) A NATIONALLY RECOGNIZED OR NATIONALLY**
22 **ESTABLISHED BRAND NAME OR TRADE NAME OF A NONTOBACCO ITEM OR**
23 **SERVICE; OR**

24 **(II) A NATIONALLY ESTABLISHED SPORTS TEAM,**
25 **ENTERTAINMENT GROUP, OR INDIVIDUAL CELEBRITY.**

26 **(2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO**
27 **ANY MOIST SNUFF BRAND NAME IN EXISTENCE ON OR BEFORE JULY 1, 2007.**

28 **16-704.**

29 **(A) (1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A**
30 **MANUFACTURER MAY NOT ENGAGE IN OUTDOOR ADVERTISING OR ADVERTISING**
31 **ON A MASS TRANSIT SYSTEM WITHIN THE STATE.**

1 **(2) THE COMPTROLLER SHALL ADOPT REGULATIONS TO**
2 **PROVIDE A PLAN FOR THE REMOVAL, WITHIN 150 DAYS, OF ALL OUTDOOR**
3 **ADVERTISING.**

4 **(B) A MANUFACTURER MAY ENGAGE IN OUTDOOR ADVERTISING OR**
5 **ADVERTISING ON A MASS TRANSIT SYSTEM IF THE ADVERTISEMENT IS LOCATED**
6 **IN AN ADULT ONLY FACILITY AND NOT VISIBLE TO A PERSON OUTSIDE THE**
7 **ADULT ONLY FACILITY.**

8 **16-705.**

9 **A MANUFACTURER MAY NOT ENTER INTO AN AGREEMENT TO PROHIBIT A**
10 **THIRD PARTY FROM DISPLAYING, PURCHASING, OR SELLING ADVERTISING**
11 **THAT DISCOURAGES THE USE OF MOIST SNUFF.**

12 **16-706.**

13 **(A) (1) ON OR AFTER JULY 1, 2010 A MANUFACTURER MAY NOT**
14 **DISTRIBUTE, LICENSE, MARKET, OFFER, OR SELL APPAREL OR OTHER**
15 **MERCHANDISE THAT CONTAINS A MOIST SNUFF BRAND NAME.**

16 **(2) (I) NOTWITHSTANDING PARAGRAPH (1) OF THIS**
17 **SUBSECTION, A MANUFACTURER MAY NOT BE REQUIRED TO BREACH OR**
18 **TERMINATE A LICENSING AGREEMENT OR OTHER CONTRACT IN EXISTENCE ON**
19 **OR BEFORE JUNE 20, 2007.**

20 **(II) SUBPARAGRAPH (I) OF THIS PARAGRAPH DOES NOT**
21 **APPLY TO ANY CONTRACT EXTENDED BEYOND ITS TERM AS IN EXISTENCE ON**
22 **JUNE 20, 2007.**

23 **(B) A MANUFACTURER MAY DISTRIBUTE, TO AN ADULT EMPLOYEE OF**
24 **THE MANUFACTURER, APPAREL OR OTHER MERCHANDISE THAT IS INTENDED**
25 **FOR THE PERSONAL USE OF THE EMPLOYEE.**

26 **(C) THIS SECTION DOES NOT APPLY TO APPAREL OR OTHER**
27 **MERCHANDISE THAT IS NOT:**

28 **(1) DISTRIBUTED TO THE GENERAL PUBLIC; AND**

29 **(2) USED WITHIN AN ADULT-ONLY FACILITY.**

30 **16-707.**

1 (A) ON OR AFTER JULY 8, 2009, A MANUFACTURER MAY NOT
2 DISTRIBUTE FREE SAMPLES OF MOIST SNUFF.

3 (B) A MANUFACTURER MAY PROVIDE A FREE SAMPLE OF MOIST SNUFF
4 TO AN ADULT IN CONNECTION WITH:

5 (1) THE EXCHANGE, PURCHASE, OR REDEMPTION OF A PURCHASE
6 OF MOIST SNUFF; OR

7 (2) CONSUMER TESTING OR EVALUATION OF MOIST SNUFF.

8 **16-708.**

9 (A) ON OR AFTER JULY 1, 2010, EXCEPT AS PROVIDED IN SUBSECTION
10 (B) OF THIS SECTION, A MANUFACTURER MAY NOT PROVIDE:

11 (1) AN ITEM IN EXCHANGE FOR THE PURCHASE OF MOIST SNUFF;
12 OR

13 (2) CREDITS, PROOFS-OF-PURCHASE, OR COUPONS FOR THE
14 PURCHASE OF MOIST SNUFF.

15 (B) (1) A MANUFACTURER MAY PROVIDE THE ITEMS UNDER
16 SUBSECTION (A) OF THIS SECTION IF THE MANUFACTURER HAS PROOF THE
17 PERSON IS AN ADULT.

18 (2) A DRIVER'S LICENSE OR OTHER GOVERNMENT-ISSUED
19 IDENTIFICATION OR A PHOTOCOPY OF THE LICENSE OR IDENTIFICATION IS
20 SUFFICIENT PROOF IF THE VALIDITY OF THE IDENTIFICATION IS CERTIFIED BY
21 THE PERSON TO WHOM IT IS PROVIDED.

22 (3) FOR THE PURPOSES OF MOIST SNUFF PROVIDED OR
23 REDEEMED AT RETAIL ESTABLISHMENTS, A MANUFACTURER IS ENTITLED TO
24 RELY ON VERIFICATION OF PROOF OF AGE BY THE RETAILER.

25 **16-709.**

26 A MANUFACTURER MAY NOT PROVIDE MOIST SNUFF TO A SPORTS TEAM
27 OR ENTERTAINMENT GROUP AT LESS THAN FAIR MARKET VALUE OR IN
28 CONSIDERATION FOR ANY SERVICES.

29 **16-710.**

1 (A) A MANUFACTURER MAY NOT LICENSE OR OTHERWISE EXPRESSLY
2 AUTHORIZE A THIRD PARTY TO USE OR ADVERTISE A BRAND NAME IN A MANNER
3 IN WHICH THE MANUFACTURER IS PROHIBITED BY THIS TITLE.

4 (B) A MANUFACTURER SHALL DESIGNATE A PERSON TO WHOM THE
5 ATTORNEY GENERAL MAY PROVIDE WRITTEN NOTICE OF A VIOLATION UNDER
6 THIS SUBTITLE.

7 (C) IF THE ATTORNEY GENERAL PROVIDES NOTICE UNDER
8 SUBSECTION (B) OF THIS SECTION, A MANUFACTURER SHALL TAKE PROMPT
9 COMMERCIALY REASONABLE STEPS AGAINST THE VIOLATION.

10 (D) A MANUFACTURER IS NOT REQUIRED TO:

11 (1) BREACH OR TERMINATE A LICENSING AGREEMENT OR OTHER
12 CONTRACT IN EXISTENCE ON OR BEFORE JULY 1, 2007; OR

13 (2) COLLECT, RETRIEVE, OR OTHERWISE RECOVER AN ITEM THAT
14 WAS DISTRIBUTED, LICENSED, MARKETED, OFFERED, OR SOLD ON OR BEFORE
15 JULY 1, 2009.

16 **16-711.**

17 (A) A MANUFACTURER MAY NOT ENTER INTO A CONTRACT OR
18 CONSPIRACY WITH OTHER MANUFACTURERS TO LIMIT OR SUPPRESS:

19 (1) COMPETITION IN THE PRODUCTION OR DISTRIBUTION OF
20 INFORMATION ABOUT THE HEALTH HAZARDS OR OTHER CONSEQUENCES OF
21 THE USE OF MOIST SNUFF;

22 (2) RESEARCH INTO MOIST SNUFF AND HEALTH; OR

23 (3) RESEARCH INTO THE MARKETING OR DEVELOPMENT OF NEW
24 PRODUCTS.

25 (B) A MANUFACTURER OF MOIST SNUFF MAY NOT BE REQUIRED UNDER
26 SUBSECTION (A) OF THIS SECTION:

27 (1) TO DISCLOSE, DISTRIBUTE, OR OTHERWISE PRODUCE
28 INFORMATION THAT IS SUBJECT TO ANY PRIVILEGE OR PROTECTION; OR

29 (2) TO CONDUCT ANY RESEARCH.

1 (C) A MANUFACTURER MAY ENTER INTO ANY JOINT DEFENSE OR JOINT
2 LEGAL INTEREST AGREEMENT OR ARRANGEMENT.

3 **16-712.**

4 (A) A MANUFACTURER SHALL REAFFIRM CORPORATE PRINCIPLES
5 THAT EXPRESS AND EXPLAIN THE MANUFACTURER'S COMMITMENT TO COMPLY
6 WITH THIS SUBTITLE AND THE REDUCTION OF MINORS' USE OF MOIST SNUFF.

7 (B) ON OR BEFORE NOVEMBER 1, 2009, THE REAFFIRMATION
8 REQUIRED IN SUBSECTION (A) OF THIS SECTION SHALL BE DELIVERED TO THE
9 ATTORNEY GENERAL.

10 **16-713.**

11 A MANUFACTURER MAY NOT MAKE A MATERIAL MISREPRESENTATION OF
12 FACT REGARDING THE HEALTH CONSEQUENCES OF USING MOIST SNUFF OR AN
13 ADDITIVE OR OTHER INGREDIENT OF MOIST SNUFF.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 July 1, 2009.