

SENATE BILL 735

C8
SB 708/13 – FIN

4lr2405

By: **Senator Feldman**

Introduced and read first time: January 31, 2014

Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Tobacco–Related Disease Products Research, Development, and Commercialization Program

FOR the purpose of establishing the Tobacco–Related Disease Products Research, Development, and Commercialization Program; specifying the purpose of the Program; establishing the Tobacco–Related Disease Products Research, Development, and Commercialization Fund as a special, nonlapsing fund; specifying the purpose of the Fund; requiring the Maryland Biotechnology Center in the Department of Business and Economic Development to administer the Fund; requiring the State Treasurer to hold the Fund and the Comptroller to account for the Fund; specifying the contents of the Fund; specifying the purpose for which the Fund may be used; providing for the investment of money in and expenditures from the Fund; establishing certain criteria and certain award amounts for grants awarded under the Program; requiring certain recipients of Program funds to pay a certain royalty; authorizing the Department to adopt certain regulations; exempting the Fund from a certain provision of law requiring interest on State money in special funds to accrue to the General Fund of the State; requiring the Governor to make a certain appropriation, beginning in a certain fiscal year, from the Cigarette Restitution Fund each year under certain circumstances; defining certain terms; providing for the termination of this Act; and generally relating to the Tobacco–Related Disease Products Research, Development, and Commercialization Program.

BY adding to

Article – Economic Development

Section 5–1401 through 5–1406 to be under the new subtitle “Subtitle 14.
Tobacco–Related Disease Products Research, Development, and
Commercialization Program”

Annotated Code of Maryland

(2008 Volume and 2013 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 6–226(a)(2)(ii)76. and 77. and 7–317(g)
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

BY adding to
Article – State Finance and Procurement
Section 6–226(a)(2)(ii)78.
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

Preamble

WHEREAS, The United States Surgeon General has determined that cigarette smoking causes lung cancer, heart disease, and other serious diseases and that there are hundreds of tobacco–related deaths in the United States each year; and

WHEREAS, Because cigarette smoking presents serious public health concerns, leading United States tobacco product manufacturers entered into a settlement agreement on November 23, 1998, entitled the “Master Settlement Agreement” with the State of Maryland; and

WHEREAS, The Master Settlement Agreement obligates these manufacturers to pay substantial sums to the State of Maryland, in return for a release of past, present, and certain future claims against them as described in the Agreement; and

WHEREAS, The Master Settlement Agreement has resulted in approximately \$1.5 billion in payments to the State of Maryland from leading United States tobacco product manufacturers; and

WHEREAS, The State of Maryland received approximately \$150 million in fiscal year 2012 through the Master Settlement Agreement and annual payments are anticipated for at least the next 15 years; and

WHEREAS, The Biotechnology Industry Organization reports that 16 states have used funds from the Master Settlement Agreement to support the biotechnology industry in those states; and

WHEREAS, Although the biotechnology industry is a pillar of job creation in the State, to date Maryland has not used any funds from the Master Settlement Agreement to support its biotechnology industry; and

WHEREAS, Small biotechnology companies have access to only approximately 3% of the \$27 billion in yearly grant funding for research and development provided through the National Institutes of Health; now, therefore,

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

Article – Economic Development

SUBTITLE 14. TOBACCO–RELATED DISEASE PRODUCTS RESEARCH, DEVELOPMENT, AND COMMERCIALIZATION PROGRAM.

5–1401.

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

(B) “FUND” MEANS THE TOBACCO–RELATED DISEASE PRODUCTS RESEARCH, DEVELOPMENT, AND COMMERCIALIZATION FUND ESTABLISHED UNDER § 5–1403 OF THIS SUBTITLE.

(C) “PROGRAM” MEANS THE TOBACCO–RELATED DISEASE PRODUCTS RESEARCH, DEVELOPMENT, AND COMMERCIALIZATION PROGRAM ESTABLISHED UNDER § 5–1402 OF THIS SUBTITLE.

5–1402.

(A) THERE IS A TOBACCO–RELATED DISEASE PRODUCTS RESEARCH, DEVELOPMENT, AND COMMERCIALIZATION PROGRAM IN THE DEPARTMENT.

(B) THE PURPOSE OF THE PROGRAM IS TO PROMOTE THE RESEARCH, DEVELOPMENT, AND COMMERCIALIZATION OF INNOVATIVE PRODUCTS AND TECHNOLOGIES THAT ADDRESS TOBACCO–RELATED DISEASES.

5–1403.

(A) THERE IS A TOBACCO–RELATED DISEASE PRODUCTS RESEARCH, DEVELOPMENT, AND COMMERCIALIZATION FUND IN THE DEPARTMENT.

(B) THE PURPOSE OF THE FUND IS TO PROVIDE GRANT MONEY TO SUPPORT THE PURPOSES OF THE PROGRAM.

(C) THE MARYLAND BIOTECHNOLOGY CENTER IN THE DEPARTMENT SHALL ADMINISTER THE FUND.

(D) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7–302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

(E) THE FUND CONSISTS OF:

(1) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND, INCLUDING MONEY APPROPRIATED FROM THE CIGARETTE RESTITUTION FUND ESTABLISHED UNDER § 7-317 OF THE STATE FINANCE AND PROCUREMENT ARTICLE;

(2) ROYALTIES RECEIVED UNDER § 5-1405 OF THIS SUBTITLE;

(3) INVESTMENT EARNINGS OF THE FUND; AND

(4) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE BENEFIT OF THE FUND.

(F) THE FUND SHALL BE USED TO COVER THE COSTS OF THE PROGRAM, INCLUDING ANY GRANTS THAT ARE AWARDED TO ELIGIBLE RECIPIENTS.

(G) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

(2) ANY INVESTMENT EARNINGS OF THE FUND SHALL BE PAID INTO THE FUND.

(H) EXPENDITURES FROM THE FUND MAY BE MADE ONLY IN ACCORDANCE WITH THE STATE BUDGET.

5-1404.

(A) IN CONSULTATION WITH THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, THE MARYLAND BIOTECHNOLOGY CENTER IN THE DEPARTMENT SHALL AWARD GRANTS TO APPLICANTS FOR RESEARCH, DEVELOPMENT, AND COMMERCIALIZATION OF INNOVATIVE PRODUCTS AND TECHNOLOGIES THAT ADDRESS TOBACCO-RELATED DISEASES, INCLUDING THERAPEUTICS, DIAGNOSTICS, AND MEDICAL DEVICES.

(B) THE DEPARTMENT SHALL AWARD GRANTS TO APPLICANTS ON A COMPETITIVE BASIS, WITH PRIORITY GIVEN TO THE FOLLOWING CRITERIA:

(1) THE TECHNICAL AND SCIENTIFIC MERIT OF THE APPLICANT'S PROPOSAL AND ITS POTENTIAL ABILITY TO ADDRESS THE UNMET MEDICAL

NEEDS OF THE CITIZENS OF MARYLAND, INCLUDING THE NEEDS OF SMOKERS, FORMER SMOKERS, AND NONSMOKERS EXPOSED TO SECONDHAND SMOKE;

(2) THE DEGREE OF THE ASSOCIATION BETWEEN CIGARETTE SMOKING AND THE DISEASE BEING ADDRESSED BY THE APPLICANT'S PROPOSAL;

(3) THE AMOUNT OF TIME THE PROPOSAL IS LIKELY TO TAKE TO RESULT IN A LATE-STAGE CLINICAL TRIAL OR A MARKETED PRODUCT, WITH PRIORITY GIVEN TO:

(I) IN THE CASE OF THERAPEUTICS, PROPOSALS REASONABLY LIKELY TO RESULT IN A LATE-STAGE CLINICAL TRIAL WITHIN 3 YEARS FROM THE END OF THE PROJECT PERIOD; OR

(II) IN THE CASE OF DEVICES AND DIAGNOSTICS, PROPOSALS REASONABLY LIKELY TO RESULT IN A MARKETED PRODUCT WITHIN 3 YEARS OF THE END OF THE PROJECT PERIOD;

(4) THE APPLICANT'S TRACK RECORD IN BRINGING PRODUCTS TO MARKET;

(5) THE APPLICANT'S TRACK RECORD IN LEVERAGING OTHER FUNDING SOURCES, INCLUDING PRIVATE CAPITAL; AND

(6) THE POTENTIAL FOR THE CREATION OF NEW JOBS IN THE STATE THAT CAN BE SUSTAINED WITHOUT CONTINUED STATE FUNDING, INCLUDING MANUFACTURING JOBS.

(C) AN APPLICANT MAY NOT RECEIVE MORE THAN ONE GRANT AWARD PER FISCAL YEAR.

(D) GRANT AWARDS SHALL BE IN THE FOLLOWING AMOUNTS:

(1) \$200,000 FOR A SINGLE COMPANY; OR

(2) \$300,000 FOR A COMPANY COLLABORATING WITH A NONPROFIT MEDICAL RESEARCH INSTITUTE OR CARE FACILITY IN THE STATE.

5-1405.

(A) (1) PROGRAM RECIPIENTS WHO DEVELOP OR IMPROVE A PRODUCT OR SERVICE WITH MONEY FROM THE FUND THAT RESULTS IN A

MARKETED PRODUCT OR SERVICE SHALL PAY THE STATE A ROYALTY OF 3% OF NET SALES OF THE PRODUCT OR SERVICE.

(2) THE TOTAL AMOUNT OF A ROYALTY PAID BY A PROGRAM RECIPIENT UNDER THIS SECTION MAY NOT BE MORE THAN 300% OF THE AMOUNT OF THE GRANT RECEIVED UNDER THE PROGRAM.

(B) ROYALTIES RECEIVED UNDER THIS SECTION SHALL BE DEPOSITED IN THE FUND AND USED TO PROVIDE FUTURE AWARDS UNDER THE PROGRAM.

5-1406.

THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

Article – State Finance and Procurement

6-226.

(a) (2) (ii) The provisions of subparagraph (i) of this paragraph do not apply to the following funds:

76. the Baltimore City Public School Construction Financing Fund; [and]

77. the Spay/Neuter Fund; AND

78. TOBACCO-RELATED DISEASE PRODUCTS RESEARCH, DEVELOPMENT, AND COMMERCIALIZATION FUND.

7-317.

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

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

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

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

(II) FROM THE APPROPRIATIONS MADE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, BEGINNING IN FISCAL YEAR 2016, \$1,000,000 SHALL BE APPROPRIATED TO THE TOBACCO-RELATED DISEASE PRODUCTS RESEARCH, DEVELOPMENT, AND COMMERCIALIZATION FUND ESTABLISHED UNDER § 5-1403 OF THE ECONOMIC DEVELOPMENT ARTICLE.

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

(6) Any additional appropriations, not subject to paragraph (3), paragraph (4), or paragraph (5) of this subsection, may be made for any lawful purpose.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2014. It shall remain effective for a period of 5 years and, at the end of June 30, 2019, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.