

SENATE BILL 898

J1, C2, I4

4lr2240
CF 4lr1051

By: **Senator Ramirez**

Introduced and read first time: January 31, 2014

Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Tobacco Products – Unpackaged Cigars and Flavored Other Tobacco Products – Restrictions

FOR the purpose of prohibiting certain persons from purchasing, selling, distributing, holding for sale or distribution, or offering to sell or distribute to an individual in the State an unpackaged cigar; prohibiting certain persons from holding for sale or distribution, offering for sale or distribution, or selling or distributing flavored other tobacco products to a person in the State; providing that a certain statement or claim constitutes certain evidence; providing for the application of certain provisions of this Act; requiring the State Comptroller to enforce certain provisions of law, employ certain staff, and adopt certain regulations; establishing certain penalties; providing for a certain affirmative defense; providing that this Act does not preempt certain ordinances, resolutions, laws, or rules; stating the intent of the General Assembly; providing for the construction and application of this Act; defining certain terms; and generally relating to the sale and distribution of unpackaged cigars and flavored other tobacco products.

BY adding to

Article – Commercial Law

Section 11–5B–01 through 11–5B–03 to be under the new subtitle “Subtitle 5B. Sales of Unpackaged Cigars” and 11–5C–01 through 11–5C–03 to be under the new subtitle “Subtitle 5C. Sales of Flavored Other Tobacco Products”

Annotated Code of Maryland
(2013 Replacement Volume)

BY repealing and reenacting, with amendments,

Article – Criminal Law

Section 10–106

Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2012 Replacement Volume and 2013 Supplement)

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

Article – Commercial Law

SUBTITLE 5B. SALES OF UNPACKAGED CIGARS.

11–5B–01.

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

(B) (1) “CIGAR” MEANS A ROLL FOR SMOKING MADE IN WHOLE OR IN PART OF TOBACCO.

(2) “CIGAR” DOES NOT INCLUDE:

(I) A CIGARETTE; OR

(II) A PREMIUM CIGAR.

(C) “CIGARETTE” HAS THE MEANING STATED IN § 12–101 OF THE TAX – GENERAL ARTICLE.

(D) (1) “LITTLE CIGAR” MEANS A ROLL OF ANY SIZE OR SHAPE FOR SMOKING THAT:

(I) IS MADE OF TOBACCO OR TOBACCO MIXED WITH ANOTHER INGREDIENT; AND

(II) 1. IS WRAPPED IN PAPER OR IN ANY OTHER MATERIAL AND, WITH THE WRAPPER, WEIGHS LESS THAN 3 POUNDS PER 1,000 UNITS;

2. IS WRAPPED IN PAPER CONTAINING TOBACCO AND, WITH THE WRAPPER, WEIGHS LESS THAN 3 POUNDS PER 1,000 UNITS; OR

3. CONTAINS TOBACCO, IN ANY FORM, THAT IS FUNCTIONAL IN THE PRODUCT AND MAY BE OFFERED TO OR PURCHASED BY A CONSUMER AS A CIGARETTE BASED ON SIZE, DIAMETER, APPEARANCE, PACKAGING, OR THE TYPE OF TOBACCO USED IN THE FILLER.

(2) “LITTLE CIGAR” DOES NOT INCLUDE:

(I) A CIGARETTE; OR

(II) A PREMIUM CIGAR.

(E) “PREMIUM CIGARS” HAS THE MEANING STATED IN § 16.5–101 OF THE BUSINESS REGULATION ARTICLE.

(F) “RETAILER” MEANS A PERSON LOCATED IN THE STATE THAT SELLS OR DISTRIBUTES, HOLDS FOR SALE, OFFERS TO SELL, OR SELLS CIGARS TO A CONSUMER IN THE STATE.

(G) “SELL” HAS THE MEANING STATED IN § 11–501 OF THIS TITLE.

(H) (1) “UNPACKAGED CIGAR” MEANS:

(I) A LITTLE CIGAR THAT IS NOT CONTAINED WITHIN A SEALED PACKAGE OF AT LEAST 20 LITTLE CIGARS; OR

(II) ANY OTHER CIGAR THAT IS NOT CONTAINED WITHIN A SEALED PACKAGE OF AT LEAST FIVE CIGARS.

(2) “UNPACKAGED CIGAR” DOES NOT INCLUDE A PREMIUM CIGAR.

(I) “WHOLESALE” MEANS A PERSON, INCLUDING A SUB-WHOLESALE, WHETHER LOCATED IN OR OUTSIDE THE STATE, THAT HOLDS FOR SALE OR DISTRIBUTION, SELLS OR DISTRIBUTES, OR OFFERS TO SELL OR DISTRIBUTE CIGARS TO A RETAILER IN THE STATE.

11–5B–02.

(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A RETAILER MAY NOT PURCHASE FROM A TOBACCO MANUFACTURER OR A WHOLESALE, SELL OR DISTRIBUTE, HOLD FOR SALE, OFFER TO SELL, OR SELL TO AN INDIVIDUAL IN THE STATE AN UNPACKAGED CIGAR.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A WHOLESALE MAY NOT HOLD FOR SALE OR DISTRIBUTION, SELL OR DISTRIBUTE, OR OFFER TO SELL OR DISTRIBUTE TO AN INDIVIDUAL IN THE STATE AN UNPACKAGED CIGAR.

(C) IN ADDITION TO ANY OTHER PENALTIES PROVIDED BY LAW, A PERSON THAT VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$500 OR IMPRISONMENT NOT EXCEEDING 3 MONTHS OR BOTH.

11-5B-03.

THE STATE COMPTROLLER SHALL:

- (1) ENFORCE THIS SUBTITLE;
- (2) EMPLOY INSPECTORS AND OTHER PERSONNEL NECESSARY TO ENFORCE THIS SUBTITLE; AND
- (3) ADOPT REGULATIONS NECESSARY TO IMPLEMENT AND ENFORCE THIS SUBTITLE.

SUBTITLE 5C. SALES OF FLAVORED OTHER TOBACCO PRODUCTS.

11-5C-01.

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

(B) (1) "CHARACTERIZING FLAVOR" MEANS A DISTINGUISHABLE TASTE OR AROMA IMPARTED TO THE TOBACCO OR SMOKE OF AN OTHER TOBACCO PRODUCT BEFORE OR DURING CONSUMPTION.

(2) "CHARACTERIZING FLAVOR" INCLUDES A TASTE OR AN AROMA RELATING TO ANY FRUIT, CHOCOLATE, VANILLA, HONEY, CANDY, COCOA, DESSERT, COFFEE, ALCOHOLIC BEVERAGE, HERB, OR SPICE FLAVORING.

(3) "CHARACTERIZING FLAVOR" DOES NOT INCLUDE TOBACCO, MENTHOL, MINT, OR WINTERGREEN AND DOES INCLUDE A TASTE OR AROMA ATTRIBUTED TO THE TOBACCO OR SMOKE SOLELY BASED ON THE USE OF ADDITIVES OR FLAVORINGS OR ON THE PROVISION BY ANY MEANS OF AN INGREDIENT LIST.

(C) (1) "CIGAR" MEANS A ROLL FOR SMOKING MADE IN WHOLE OR IN PART OF TOBACCO.

(2) "CIGAR" DOES NOT INCLUDE:

(I) A CIGARETTE AS DEFINED IN § 12-101 OF THE TAX – GENERAL ARTICLE; OR

(II) A PREMIUM CIGAR.

(D) “CIGARETTE” HAS THE MEANING STATED IN § 12-101 OF THE TAX – GENERAL ARTICLE.

(E) “COMPONENT PART” INCLUDES THE TOBACCO, FILTER, PAPER, POUCH, STRIP, STICK, OR ANY OTHER DISTINGUISHABLE PART OF ANOTHER TOBACCO PRODUCT.

(F) “CONSTITUENT” MEANS ANY INGREDIENT, SUBSTANCE, CHEMICAL, OR COMPOUND, OTHER THAN TOBACCO, WATER, OR RECONSTITUTED TOBACCO SHEET, INCLUDING SMOKE CONSTITUENTS, THAT IS ADDED BY THE MANUFACTURER TO A COMPONENT PART OF ANOTHER TOBACCO PRODUCT DURING THE PROCESSING, MANUFACTURING, OR PACKAGING OF THE OTHER TOBACCO PRODUCT.

(G) “FLAVORED OTHER TOBACCO PRODUCT” MEANS AN OTHER TOBACCO PRODUCT THAT CONTAINS A CONSTITUENT OR COMPONENT PART THAT IMPARTS A CHARACTERIZING FLAVOR TO THE OTHER TOBACCO PRODUCT OR THE SMOKE OF THE OTHER TOBACCO PRODUCT.

(H) (1) “OTHER TOBACCO PRODUCT” MEANS:

(I) ANY CIGAR OR ROLL FOR SMOKING CONTAINING TOBACCO; OR

(II) ANY OTHER TOBACCO OR PRODUCT MADE FROM TOBACCO THAT IS INTENDED FOR HUMAN CONSUMPTION.

(2) “OTHER TOBACCO PRODUCT” DOES NOT INCLUDE A CIGARETTE.

(I) “RETAILER” MEANS A PERSON LOCATED IN THE STATE THAT SELLS OR DISTRIBUTES, HOLDS FOR SALE, OFFERS TO SELL, OR SELLS OTHER TOBACCO PRODUCTS TO A CONSUMER IN THE STATE.

(J) “SMOKE CONSTITUENT” MEANS ANY CHEMICAL OR CHEMICAL COMPOUND IN MAINSTREAM OR SIDESTREAM SMOKE THAT IS:

(1) TRANSFERRED FROM ANY COMPONENT PART OR CONSTITUENT OF THE OTHER TOBACCO PRODUCT TO THE SMOKE; OR

(2) FORMED BY THE COMBUSTION OR THE HEATING OF TOBACCO, A CONSTITUENT, OR ANY OTHER COMPONENT PART OF THE TOBACCO PRODUCT.

(K) "WHOLESALER" MEANS A PERSON, INCLUDING A SUB-WHOLESALE, LOCATED IN OR OUTSIDE THE STATE, THAT HOLDS FOR SALE OR DISTRIBUTION, SELLS OR DISTRIBUTES, OR OFFERS TO SELL OR DISTRIBUTE OTHER TOBACCO PRODUCTS TO A RETAILER IN THE STATE.

11-5C-02.

(A) THIS SECTION DOES NOT APPLY TO:

(1) PREMIUM CIGARS, AS DEFINED IN § 16.5-101 OF THE BUSINESS REGULATION ARTICLE, THAT:

(I) ARE MADE ENTIRELY BY HAND OF TOBACCO LEAF WRAPPER;

(II) ARE CONSTRUCTED AND WRAPPED BY HAND;

(III) WHOLESALE FOR \$2 OR MORE; AND

(IV) WEIGH MORE THAN 3 POUNDS PER 1,000 CIGARS;

(2) PIPE TOBACCO THAT IS AT LEAST 20 CUTS PER INCH AND HAS A MOISTURE CONTENT OF AT LEAST 15%; OR

(3) OTHER TOBACCO PRODUCTS SOLD OR OFFERED FOR SALE AND DISTRIBUTED BY A LICENSED TOBACCONIST ESTABLISHMENT, AS DEFINED IN § 16.5-101 OF THE BUSINESS REGULATION ARTICLE, THAT PROHIBITS AN INDIVIDUAL UNDER THE AGE OF 18 YEARS FROM ENTERING THE ESTABLISHMENT.

(B) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION AND NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A MANUFACTURER, A WHOLESALE, A RETAILER, OR ANY OTHER PERSON MAY NOT HOLD FOR SALE OR DISTRIBUTION, SELL OR DISTRIBUTE, OR OFFER TO SELL OR DISTRIBUTE A FLAVORED OTHER TOBACCO PRODUCT TO A PERSON IN THE STATE.

(2) A PUBLIC STATEMENT OR CLAIM THAT AN OTHER TOBACCO PRODUCT POSSESSES OR PRODUCES A DISTINGUISHABLE TASTE OR AROMA THAT IS MADE OR DISSEMINATED BY THE MANUFACTURER OF AN OTHER TOBACCO PRODUCT, OR BY A PERSON AUTHORIZED BY THE MANUFACTURER TO MAKE OR DISSEMINATE PUBLIC STATEMENTS OR CLAIMS CONCERNING AN OTHER TOBACCO PRODUCT, SHALL CONSTITUTE PRESUMPTIVE EVIDENCE THAT THE TOBACCO PRODUCT IS A FLAVORED OTHER TOBACCO PRODUCT.

(C) (1) A RETAILER OR ANY OTHER PERSON WHO VIOLATES THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$100 PER FLAVORED CIGAR OR SEALED PACKAGE OF CIGARS OR PER SEALED PACKAGE OF ANY OTHER TOBACCO PRODUCT OR IMPRISONMENT NOT EXCEEDING 3 MONTHS OR BOTH.

(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, A MANUFACTURER, WHOLESALER, OR RETAILER IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING \$5,000 FOR EACH BRAND OR STYLE OF FLAVORED OTHER TOBACCO PRODUCT OR ITS CONSTITUENT THAT IS FOUND TO HAVE BEEN SOLD OR OFFERED FOR SALE IN VIOLATION OF THIS SUBTITLE FOR EACH DAY THE BRAND OR STYLE IS SOLD OR AVAILABLE FOR SALE IN VIOLATION OF THIS SUBTITLE.

(II) A MANUFACTURER OF A FLAVORED OTHER TOBACCO PRODUCT HAS AN AFFIRMATIVE DEFENSE IF THE SALE OR OFFER OF SALE OF THE FLAVORED OTHER TOBACCO PRODUCT OCCURRED WITHOUT THE KNOWLEDGE, CONSENT, AUTHORIZATION, AND INVOLVEMENT, DIRECT OR INDIRECT, OF THE MANUFACTURER OF THE PRODUCT OR ITS AUTHORIZED AGENTS.

(3) THE PENALTIES PROVIDED IN THIS SUBSECTION ARE IN ADDITION TO ANY OTHER PENALTIES PROVIDED BY LAW.

11-5C-03.

THE STATE COMPTROLLER SHALL:

- (1) ENFORCE THIS SUBTITLE;**
- (2) EMPLOY INSPECTORS AND OTHER PERSONNEL NECESSARY TO ENFORCE THIS SUBTITLE; AND**
- (3) ADOPT REGULATIONS NECESSARY TO IMPLEMENT AND ENFORCE THIS SUBTITLE.**

Article – Criminal Law

10–106.

(a) A person may not sell or offer for sale a clove cigarette, **AN UNPACKAGED CIGAR AS DEFINED IN § 11–5B–01 OF THE COMMERCIAL LAW ARTICLE, OR A FLAVORED OTHER TOBACCO PRODUCT AS DEFINED IN § 11–5C–01 OF THE COMMERCIAL LAW ARTICLE TO AN INDIVIDUAL IN THE STATE.**

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine of \$500.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act does not preempt any ordinance, resolution, law, or rule more stringent than this Act regulating the sale, marketing, and advertising of tobacco products, including the regulation of the packaging and flavoring of tobacco products.

SECTION 3. AND BE IT FURTHER ENACTED, That, subject to Section 1 of this Act as it pertains to the sale of unpackaged cigars, it is the intent of the General Assembly that this Act abrogate the holding of the Court of Appeals in *Altadis U.S.A., Inc., et al. v. Prince George’s County, Maryland*, 431 Md. 507 (2013).

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.