

SENATE BILL 883

Q7, C2

1lr2579
CF HB 1324

By: **Senator Guzzone**

Introduced and read first time: February 9, 2021

Assigned to: Budget and Taxation

Reassigned: Budget and Taxation and Finance, February 10, 2021

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 26, 2021

CHAPTER _____

1 AN ACT concerning

2 **Tobacco Tax – Out-of-State Sales of Premium Cigars and Pipe Tobacco**

3 FOR the purpose of requiring a person located outside the State to have an appropriate
4 license whenever the person sells premium cigars or pipe tobacco to a consumer in
5 the State; authorizing the Executive Director of the Alcohol and Tobacco Commission
6 to delegate certain duties; authorizing the holder of a remote tobacco seller license
7 to sell premium cigars and pipe tobacco to consumers in the State; establishing the
8 requirements for an applicant for a remote tobacco seller license; providing for
9 license application procedures and fees; prohibiting a person from applying for a
10 license within a certain period of time after the person's license was revoked;
11 requiring the Executive Director to issue remote tobacco seller licenses under certain
12 circumstances; providing for the renewal of a license; prohibiting the assignment of
13 a remote tobacco seller license; authorizing the Executive Director to deny an
14 application for a license for certain reasons; requiring the Executive Director to give
15 certain notice of certain final actions; providing for a certain hearing process
16 regarding a final decision; authorizing the Executive Director to revoke a license for
17 certain reasons; requiring the Executive Director to give certain notice of a
18 revocation; authorizing a licensee to make a certain offer of compromise in lieu of
19 revocation of a license; authorizing the Executive Director to accept certain offers of
20 compromise; providing for judicial review of a final decision of the Executive
21 Director; prohibiting a person from acting, or attempting to act, as a licensed remote
22 tobacco seller without a license; requiring the Executive Director to remit certain
23 license fees to the General Fund of the State; stating the intent of the General
24 Assembly; requiring the Executive Director to adopt certain regulations; providing

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 for certain penalties; specifying that certain premium cigars and pipe tobacco are
 2 contraband; altering the price used to calculate the tobacco tax for certain premium
 3 cigars and pipe tobacco sold by an out-of-state seller; requiring an out-of-state
 4 seller to pay the tobacco tax in a certain manner; requiring an out-of-state seller to
 5 file certain tax returns and provide certain information; requiring an
 6 out-of-state seller to maintain certain records; requiring the Comptroller to adopt
 7 certain regulations; authorizing the Comptroller to require a certain bond from an
 8 out-of-state seller; authorizing the Comptroller to waive the requirement for the
 9 bond under certain circumstances; defining certain terms; altering a certain
 10 definition; providing for a delayed effective date; and generally relating to
 11 out-of-state sales of premium cigars and pipe tobacco.

12 BY adding to
 13 Article – Business Regulation
 14 Section 16.9–101 through 16.9–214 to be under the new title “Title 16.9.
 15 Out-of-State Sales of Premium Cigars and Pipe Tobacco”
 16 Annotated Code of Maryland
 17 (2015 Replacement Volume and 2020 Supplement)

18 BY repealing and reenacting, with amendments,
 19 Article – Tax – General
 20 Section 12–101(f), 12–103, ~~12–105(b)~~, 12–201, 12–302(e), and 13–825(h)
 21 Annotated Code of Maryland
 22 (2016 Replacement Volume and 2020 Supplement)

23 BY repealing and reenacting, without amendments,
 24 Article – Tax – General
 25 Section 12–101(g) and (h)
 26 Annotated Code of Maryland
 27 (2016 Replacement Volume and 2020 Supplement)

28 BY repealing and reenacting, with amendments,
 29 Article – Tax – General
 30 Section 12–105(b)
 31 Annotated Code of Maryland
 32 (2016 Replacement Volume and 2020 Supplement)
 33 (As enacted by Chapter 37 of the Acts of the General Assembly of 2021)

34 BY adding to
 35 Article – Tax – General
 36 Section 12–105(c) and 12–204
 37 Annotated Code of Maryland
 38 (2016 Replacement Volume and 2020 Supplement)

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

1 **Article – Business Regulation**

2 **TITLE 16.9. OUT-OF-STATE SALES OF PREMIUM CIGARS AND PIPE TOBACCO.**

3 **SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.**

4 **16.9–101.**

5 **(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
6 **INDICATED.**

7 **(B) “EXECUTIVE DIRECTOR” MEANS THE EXECUTIVE DIRECTOR OF THE**
8 **ALCOHOL AND TOBACCO COMMISSION.**

9 **(C) “LICENSE” MEANS A REMOTE TOBACCO SELLER LICENSE ISSUED BY**
10 **THE EXECUTIVE DIRECTOR UNDER SUBTITLE 2 OF THIS TITLE.**

11 **(D) “PIPE TOBACCO” HAS THE MEANING STATED IN § 16.5–101 OF THIS**
12 **ARTICLE.**

13 **(E) “PREMIUM CIGARS” HAS THE MEANING STATED IN § 16.5–101 OF THIS**
14 **ARTICLE.**

15 **(F) “REMOTE TOBACCO SELLER” MEANS THE HOLDER OF A REMOTE**
16 **TOBACCO SELLER LICENSE ISSUED UNDER THIS TITLE.**

17 **(G) “SELL” MEANS TO EXCHANGE OR TRANSFER, OR TO AGREE TO**
18 **EXCHANGE OR TRANSFER, TITLE OR POSSESSION OF PROPERTY, IN ANY MANNER OR**
19 **BY ANY MEANS, FOR CONSIDERATION.**

20 **16.9–102.**

21 **THE EXECUTIVE DIRECTOR MAY DELEGATE ANY POWER OR DUTY OF THE**
22 **EXECUTIVE DIRECTOR.**

23 **16.9–103.**

24 **THIS TITLE APPLIES ONLY TO A PERSON LOCATED OUTSIDE THE STATE WHEN**
25 **SELLING PREMIUM CIGARS OR PIPE TOBACCO TO A CONSUMER IN THE STATE.**

26 **SUBTITLE 2. REMOTE TOBACCO SELLER LICENSES.**

27 **16.9–201.**

1 **(A) A PERSON LOCATED OUTSIDE THE STATE MUST HAVE A REMOTE**
2 **TOBACCO SELLER LICENSE BEFORE THE PERSON MAY SELL PREMIUM CIGARS OR**
3 **PIPE TOBACCO TO A CONSUMER IN THE STATE.**

4 **(B) A REMOTE TOBACCO SELLER LICENSE AUTHORIZES THE LICENSEE TO**
5 **SELL PREMIUM CIGARS AND PIPE TOBACCO THROUGH A COMMON CARRIER OR**
6 **PRIVATE DELIVERY SERVICE TO A CONSUMER IN THE STATE BY RECEIVING AND**
7 **FILLING ORDERS THAT THE CONSUMER TRANSMITS BY ELECTRONIC OR OTHER**
8 **MEANS.**

9 **16.9–202.**

10 **AN APPLICANT FOR A REMOTE TOBACCO SELLER LICENSE SHALL:**

11 **(1) IDENTIFY THE PREMIUM CIGARS AND PIPE TOBACCO THAT THE**
12 **REMOTE TOBACCO SELLER INTENDS TO SELL AND SHIP INTO THE STATE;**

13 **(2) UTILIZE THIRD–PARTY AGE VERIFICATION FOR PURCHASES AND**
14 **DELIVERIES; AND**

15 **(3) CONSENT TO BEING SUBJECT TO THE TOBACCO TAX UNDER TITLE**
16 **12 OF THE TAX – GENERAL ARTICLE.**

17 **16.9–203.**

18 **(A) AN APPLICANT FOR A REMOTE TOBACCO SELLER LICENSE SHALL:**

19 **(1) SUBMIT AN APPLICATION TO THE EXECUTIVE DIRECTOR ON THE**
20 **FORM AND CONTAINING THE INFORMATION THAT THE EXECUTIVE DIRECTOR**
21 **REQUIRES; AND**

22 **(2) PAY TO THE EXECUTIVE DIRECTOR A FEE OF:**

23 **(I) \$25; OR**

24 **(II) AN AMOUNT SET BY REGULATION.**

25 **(B) IF A PERSON HAS HAD A LICENSE REVOKED UNDER § 16.9–207 OF THIS**
26 **SUBTITLE, THE PERSON MAY NOT REAPPLY FOR A LICENSE WITHIN 1 YEAR AFTER**
27 **THE DATE WHEN THE PRIOR LICENSE WAS REVOKED.**

28 **16.9–204.**

1 **THE EXECUTIVE DIRECTOR SHALL ISSUE A REMOTE TOBACCO SELLER**
2 **LICENSE TO EACH APPLICANT WHO MEETS THE REQUIREMENTS OF THIS SUBTITLE**
3 **FOR A LICENSE TO ACT AS A REMOTE TOBACCO SELLER.**

4 **16.9–205.**

5 **(A) UNLESS A LICENSE IS RENEWED FOR A 1–YEAR TERM AS PROVIDED IN**
6 **THIS SECTION, THE LICENSE EXPIRES ON THE FIRST JUNE 30 AFTER ITS EFFECTIVE**
7 **DATE.**

8 **(B) AT LEAST 1 MONTH BEFORE A LICENSE ISSUED UNDER THIS SUBTITLE**
9 **EXPIRES, THE ISSUING OFFICIAL SHALL MAIL TO THE LICENSEE, AT THE LAST**
10 **KNOWN ADDRESS OF THE LICENSEE, A RENEWAL NOTICE THAT STATES:**

11 **(1) THE DATE ON WHICH THE CURRENT LICENSE EXPIRES; AND**

12 **(2) THE DATE BY WHICH THE ISSUING OFFICIAL MUST RECEIVE THE**
13 **RENEWAL APPLICATION FOR THE RENEWAL TO BE ISSUED AND MAILED BEFORE THE**
14 **LICENSE EXPIRES.**

15 **(C) BEFORE A LICENSE ISSUED UNDER THIS SUBTITLE EXPIRES, THE**
16 **LICENSEE MAY RENEW IT FOR AN ADDITIONAL 1–YEAR TERM, IF THE LICENSEE:**

17 **(1) OTHERWISE IS ENTITLED TO BE LICENSED;**

18 **(2) SUBMITS TO THE ISSUING OFFICIAL A RENEWAL APPLICATION ON**
19 **THE FORM THAT THE ISSUING OFFICIAL REQUIRES; AND**

20 **(3) PAYS TO THE ISSUING OFFICIAL THE LICENSE FEE REQUIRED**
21 **UNDER § 16.9–203 OF THIS SUBTITLE.**

22 **(D) THE ISSUING OFFICIAL SHALL RENEW THE LICENSE OF EACH LICENSEE**
23 **WHO MEETS THE REQUIREMENTS OF THIS SECTION.**

24 **16.9–206.**

25 **A REMOTE TOBACCO SELLER LICENSEE MAY NOT ASSIGN THE LICENSE.**

26 **16.9–207.**

27 **(A) SUBJECT TO THE HEARING PROVISIONS OF § 16.9–208 OF THIS**
28 **SUBTITLE, THE EXECUTIVE DIRECTOR MAY DENY A LICENSE TO AN APPLICANT,**
29 **REPRIMAND A LICENSEE, OR REVOKE A LICENSE IF THE APPLICANT OR LICENSEE:**

1 **(1) FRAUDULENTLY OR DECEPTIVELY OBTAINS OR ATTEMPTS TO**
2 **OBTAIN A LICENSE FOR THE APPLICANT OR LICENSEE OR FOR ANOTHER PERSON;**

3 **(2) FRAUDULENTLY OR DECEPTIVELY USES A LICENSE;**

4 **(3) IS CONVICTED, UNDER THE LAWS OF THE UNITED STATES OR OF**
5 **ANY OTHER STATE, OF:**

6 **(I) A FELONY; OR**

7 **(II) A MISDEMEANOR THAT IS A CRIME OF MORAL TURPITUDE**
8 **AND IS DIRECTLY RELATED TO THE FITNESS AND QUALIFICATION OF THE**
9 **APPLICANT OR LICENSEE;**

10 **(4) IS CONVICTED OF A VIOLATION UNDER § 10-107 OF THE**
11 **CRIMINAL LAW ARTICLE;**

12 **(5) VIOLATES TITLE 12 OF THE TAX – GENERAL ARTICLE OR**
13 **REGULATIONS ADOPTED UNDER THAT TITLE;**

14 **(6) FAILS TO UTILIZE THIRD-PARTY AGE VERIFICATION FOR**
15 **PURCHASES AND DELIVERIES; OR**

16 **(7) VIOLATES THIS TITLE OR REGULATIONS ADOPTED UNDER THIS**
17 **TITLE.**

18 **(B) SUBJECT TO THE HEARING PROVISIONS OF § 16.9-208 OF THIS**
19 **SUBTITLE, THE EXECUTIVE DIRECTOR SHALL DENY A LICENSE TO ANY APPLICANT**
20 **WHO HAS HAD A LICENSE REVOKED UNDER THIS SECTION UNTIL:**

21 **(1) 1 YEAR HAS PASSED SINCE THE LICENSE WAS REVOKED; AND**

22 **(2) IT SATISFACTORILY APPEARS TO THE EXECUTIVE DIRECTOR**
23 **THAT THE APPLICANT WILL COMPLY WITH THIS TITLE AND ANY REGULATIONS**
24 **ADOPTED UNDER THIS TITLE.**

25 **(C) BEFORE THE ISSUANCE OR RENEWAL OF ANY LICENSE, THE EXECUTIVE**
26 **DIRECTOR SHALL CONDUCT AN INVESTIGATION WITH REGARD TO:**

27 **(1) THE APPLICANT;**

28 **(2) THE BUSINESS TO BE OPERATED; AND**

29 **(3) THE FACTS SET FORTH IN THE APPLICATION.**

1 **16.9–208.**

2 (A) EXCEPT AS OTHERWISE PROVIDED IN § 10–226 OF THE STATE
3 GOVERNMENT ARTICLE, BEFORE THE EXECUTIVE DIRECTOR TAKES ANY FINAL
4 ACTION UNDER § 16.9–207 OF THIS SUBTITLE, THE EXECUTIVE DIRECTOR SHALL
5 GIVE THE PERSON AGAINST WHOM THE ACTION IS CONTEMPLATED AN
6 OPPORTUNITY FOR A HEARING BEFORE THE EXECUTIVE DIRECTOR.

7 (B) THE EXECUTIVE DIRECTOR SHALL GIVE NOTICE AND HOLD THE
8 HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE
9 GOVERNMENT ARTICLE.

10 (C) THE EXECUTIVE DIRECTOR MAY ADMINISTER OATHS IN A PROCEEDING
11 UNDER THIS SECTION.

12 (D) THE PERSON AGAINST WHOM THE ACTION IS CONTEMPLATED MAY BE
13 REPRESENTED AT THE HEARING BY COUNSEL.

14 (E) IF, AFTER DUE NOTICE, THE PERSON AGAINST WHOM THE ACTION IS
15 CONTEMPLATED DOES NOT APPEAR, NEVERTHELESS THE EXECUTIVE DIRECTOR
16 MAY HEAR AND DETERMINE THE MATTER.

17 **16.9–209.**

18 (A) SUBJECT TO THE NOTICE REQUIREMENT UNDER SUBSECTION (B) OF
19 THIS SECTION, THE EXECUTIVE DIRECTOR MAY REVOKE A LICENSE IF A LICENSEE:

20 (1) ENGAGES IN AN ACT OR OMISSION THAT IS A GROUND FOR
21 DISCIPLINE UNDER § 16.9–207(A) OF THIS SUBTITLE; OR

22 (2) VIOLATES THIS TITLE OR TITLE 12 OF THE TAX – GENERAL
23 ARTICLE OR REGULATIONS ADOPTED UNDER THESE TITLES.

24 (B) IF A LICENSE IS REVOKED UNDER THIS SECTION:

25 (1) THE EXECUTIVE DIRECTOR SHALL GIVE THE LICENSEE NOTICE
26 OF THE REVOCATION; AND

27 (2) THE REVOCATION MAY NOT TAKE EFFECT UNTIL AT LEAST 5
28 BUSINESS DAYS FOLLOWING NOTICE OF THE REVOCATION.

29 (C) THE RENEWAL OR EXPIRATION OF A LICENSE WILL NOT BAR OR ABATE
30 A DISCIPLINARY ACTION UNDER THIS SECTION.

1 (D) (1) EXCEPT FOR A VIOLATION OF § 10-107 OF THE CRIMINAL LAW
2 ARTICLE, WHENEVER ANY LICENSE ISSUED UNDER THE PROVISIONS OF THIS
3 SUBTITLE IS REVOKED BY THE EXECUTIVE DIRECTOR, THE LICENSEE MAY, BEFORE
4 THE EFFECTIVE DATE OF THE REVOCATION, PETITION THE EXECUTIVE DIRECTOR
5 FOR PERMISSION TO MAKE AN OFFER OF COMPROMISE CONSISTING OF A SUM OF
6 MONEY IN LIEU OF SERVING THE REVOCATION.

7 (2) MONEY PAID IN LIEU OF REVOCATION SHALL BE PAID INTO THE
8 GENERAL FUND OF THE STATE.

9 (3) AN OFFER OF COMPROMISE MAY NOT EXCEED AN AMOUNT SET BY
10 REGULATION.

11 (4) THE EXECUTIVE DIRECTOR MAY ACCEPT THE OFFER OF
12 COMPROMISE IF:

13 (I) THE PUBLIC WELFARE AND MORALS WOULD NOT BE
14 IMPAIRED BY ALLOWING THE LICENSEE TO OPERATE DURING THE PERIOD SET FOR
15 THE REVOCATION; AND

16 (II) THE PAYMENT OF THE SUM OF MONEY WILL ACHIEVE THE
17 DESIRED DISCIPLINARY PURPOSES.

18 (5) THE EXECUTIVE DIRECTOR SHALL ADOPT REGULATIONS TO
19 CARRY OUT THIS SUBSECTION.

20 16.9-210.

21 A PARTY TO A PROCEEDING BEFORE THE EXECUTIVE DIRECTOR WHO IS
22 AGGRIEVED BY A FINAL DECISION OF THE EXECUTIVE DIRECTOR IN A CONTESTED
23 CASE, AS DEFINED IN § 10-202 OF THE STATE GOVERNMENT ARTICLE, IS ENTITLED
24 TO JUDICIAL REVIEW AS PROVIDED IN §§ 10-222 AND 10-223 OF THE STATE
25 GOVERNMENT ARTICLE.

26 16.9-211.

27 (A) A PERSON MAY NOT ACT, ATTEMPT TO ACT, OR OFFER TO ACT AS A
28 LICENSED REMOTE TOBACCO SELLER UNLESS THE PERSON HAS AN APPROPRIATE
29 LICENSE.

30 (B) (1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
31 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000
32 OR IMPRISONMENT NOT EXCEEDING 30 DAYS OR BOTH.

1 **(2) EACH DAY THAT A VIOLATION OF THIS SECTION CONTINUES IS A**
2 **SEPARATE OFFENSE.**

3 **16.9–212.**

4 **(A) THE EXECUTIVE DIRECTOR SHALL PAY INTO THE GENERAL FUND OF**
5 **THE STATE ALL LICENSE FEES COLLECTED UNDER THIS TITLE.**

6 **(B) THE GENERAL ASSEMBLY INTENDS THAT THESE LICENSE FEES BE**
7 **USED TO ADMINISTER THIS TITLE.**

8 **16.9–213.**

9 **(A) THE EXECUTIVE DIRECTOR SHALL ADOPT REGULATIONS TO**
10 **IMPLEMENT THIS TITLE.**

11 **(B) THE REGULATIONS ADOPTED UNDER SUBSECTION (A) OF THIS SECTION**
12 **SHALL INCLUDE:**

13 **(1) MINIMUM STANDARDS FOR THIRD–PARTY AGE VERIFICATION**
14 **SERVICES A REMOTE TOBACCO SELLER IS REQUIRED TO USE; AND**

15 **(2) MINIMUM STANDARDS FOR THE TYPES OF DELIVERY SERVICES A**
16 **REMOTE TOBACCO SELLER IS AUTHORIZED TO USE.**

17 **16.9–214.**

18 **UNLESS OTHERWISE SPECIFIED IN THIS TITLE, A PERSON WHO VIOLATES ANY**
19 **PROVISION OF THIS TITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS**
20 **SUBJECT TO A FINE NOT EXCEEDING \$1,000 OR IMPRISONMENT NOT EXCEEDING 30**
21 **DAYS OR BOTH.**

22 **Article – Tax – General**

23 **12–101.**

24 **(f) “Out–of–state seller” means a person:**

25 **(1) located outside the State that sells, holds for sale, ships, or delivers**
26 **premium cigars or pipe tobacco to consumers in the State ~~if~~, during the previous calendar**
27 **year or the current calendar year:**

28 ~~(1)~~ **(1) the person’s gross revenue from the sale of premium cigars or**
29 **pipe tobacco in the State exceeds \$100,000; or**

1 ~~(2)~~ **(II)** the person sold premium cigars or pipe tobacco into the State in
2 200 or more separate transactions; **AND**

3 **(2) WHO IS REQUIRED TO HOLD A REMOTE TOBACCO SELLER LICENSE**
4 **UNDER TITLE 16.9 OF THE BUSINESS REGULATION ARTICLE.**

5 (g) “Pipe tobacco” has the meaning stated in § 16.5–101 of the Business
6 Regulation Article.

7 (h) “Premium cigars” has the meaning stated in § 16.5–101 of the Business
8 Regulation Article.

9 12–103.

10 (a) A rebuttable presumption exists that any cigarette or other tobacco product in
11 the State is subject to the tobacco tax.

12 (b) Cigarettes or other tobacco products are contraband tobacco products if they:

13 (1) are possessed or sold in the State in a manner that is not authorized
14 under this title or under Title 16 [or], Title 16.5, **OR TITLE 16.9** of the Business Regulation
15 Article; or

16 (2) are transported by vehicle in the State by a person who does not have,
17 in the vehicle, the records required by § 16–219 or § 16.5–215 of the Business Regulation
18 Article for the transportation of cigarettes or other tobacco products.

19 (c) A person who possesses cigarettes or other tobacco products has the burden of
20 proving that the cigarettes or other tobacco products are not subject to the tobacco tax.

21 12–105.

22 ~~(b) (1) Except as provided in paragraph (2) of this subsection, the tobacco tax~~
23 ~~rate for other tobacco products is 30% of:~~

24 ~~(i) the wholesale price of the tobacco products; OR~~

25 ~~(ii) FOR PIPE TOBACCO SOLD BY AN OUT-OF-STATE SELLER,~~
26 ~~THE PRICE DETERMINED UNDER SUBSECTION (C) OF THIS SECTION.~~

27 ~~(2) (i) In this paragraph, “premium cigars” has the meaning stated in §~~
28 ~~16.5–101 of the Business Regulation Article.~~

29 ~~(ii) Except as provided in subparagraph (iii) of this paragraph, the~~
30 ~~tobacco tax rate for cigars is 70% of the wholesale price of the cigars.~~

1 ~~(iii) The tobacco tax rate for premium cigars is 15% of:~~

2 ~~1. the wholesale price of the premium cigars; OR~~

3 ~~2. FOR PREMIUM CIGARS SOLD BY AN OUT-OF-STATE~~
 4 ~~SELLER, THE PRICE DETERMINED UNDER SUBSECTION (C) OF THIS SECTION.~~

5 (b) (1) Except as provided in paragraph (2) of this subsection, the tobacco tax
 6 rate for other tobacco products is 53% of the wholesale price of the tobacco products.

7 (2) (i) In this paragraph, “pipe tobacco” and “premium cigars” have the
 8 meanings stated in § 16.5–101 of the Business Regulation Article.

9 (ii) 1. Except as provided in subsubparagraph 2 of this
 10 subparagraph, the tobacco tax rate for cigars is 70% of the wholesale price of the cigars.

11 2. The tobacco tax rate for premium cigars is 15% of:

12 A. the wholesale price of the premium cigars; OR

13 B. FOR PREMIUM CIGARS SOLD BY AN OUT-OF-STATE
 14 SELLER, THE PRICE DETERMINED UNDER SUBSECTION (C) OF THIS SECTION.

15 (iii) The tobacco tax rate for pipe tobacco is 30% of:

16 1. the wholesale price of the pipe tobacco; OR

17 2. FOR PIPE TOBACCO SOLD BY AN OUT-OF-STATE
 18 SELLER, THE PRICE DETERMINED UNDER SUBSECTION (C) OF THIS SECTION.

19 (C) (1) **FOR PREMIUM CIGARS AND PIPE TOBACCO SOLD BY AN**
 20 **OUT-OF-STATE SELLER, THE TOBACCO TAX RATE APPLIES TO:**

21 (I) **THE ACTUAL PRICE PAID BY AN OUT-OF-STATE SELLER FOR**
 22 **A STOCK KEEPING UNIT; OR**

23 (II) **IF THE ACTUAL PRICE PAID BY AN OUT-OF-STATE SELLER**
 24 **FOR A STOCK KEEPING UNIT IS NOT AVAILABLE, THE AVERAGE OF THE ACTUAL**
 25 **PRICE PAID BY AN OUT-OF-STATE SELLER FOR A STOCK KEEPING UNIT OVER THE**
 26 **12 CALENDAR MONTHS BEFORE JANUARY 1 OF THE YEAR IN WHICH THE SALE**
 27 **OCCURS.**

28 (2) **THE COMPTROLLER SHALL ADOPT REGULATIONS TO IMPLEMENT**
 29 **THIS SUBSECTION.**

1 12-201.

2 (a) A manufacturer shall complete and file with the Comptroller a tobacco tax
3 return:

4 (1) on or before the 15th day of the month that follows the month in which
5 the manufacturer distributes in the State free sample cigarettes of the manufacturer; and

6 (2) if the Comptroller so specifies, by regulation, on other dates for each
7 month in which the manufacturer does not distribute any sample cigarettes.

8 (b) A licensed other tobacco products manufacturer shall file the information
9 return that the Comptroller requires.

10 (c) A licensed storage warehouse operator and a licensed other tobacco products
11 storage warehouse operator shall file the information return that the Comptroller requires.

12 **(D) AN OUT-OF-STATE SELLER SHALL FILE THE INFORMATION RETURN**
13 **THAT THE COMPTROLLER REQUIRES.**

14 12-204.

15 **(A) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT:**

16 **(1) REQUIRE AN OUT-OF-STATE SELLER TO MAINTAIN RECORDS OF**
17 **THE COST OF PREMIUM CIGARS AND PIPE TOBACCO ACQUIRED FOR SALE INTO THE**
18 **STATE; AND**

19 **(2) SPECIFY THE PERIOD FOR WHICH AN OUT-OF-STATE SELLER**
20 **MUST MAINTAIN THE RECORDS REQUIRED UNDER ITEM (1) OF THIS SUBSECTION.**

21 **(B) AN OUT-OF-STATE SELLER SHALL ALLOW THE COMPTROLLER TO**
22 **EXAMINE THE RECORDS MAINTAINED IN ACCORDANCE WITH SUBSECTION (A) OF**
23 **THIS SECTION.**

24 12-302.

25 (e) **(1)** An out-of-state seller shall pay the tobacco tax on pipe tobacco or
26 premium cigars on which the tobacco tax has not been paid.

27 **(2) AN OUT-OF-STATE SELLER SHALL PAY THE TOBACCO TAX ON PIPE**
28 **TOBACCO AND PREMIUM CIGARS BY FILING A TAX RETURN, WITH ANY SUPPORTING**
29 **SCHEDULES, ON FORMS PROVIDED BY THE COMPTROLLER:**

1 **(I) ON OR BEFORE THE 21ST DAY OF THE MONTH AFTER A SALE**
2 **OF PREMIUM CIGARS OR PIPE TOBACCO IS MADE; OR**

3 **(II) ON DATES SPECIFIED BY THE COMPTROLLER BY**
4 **REGULATION.**

5 **(3) FOR THE PERIOD THAT THE RETURN COVERS, THE RETURN SHALL**
6 **STATE:**

7 **(I) THE STOCK KEEPING UNIT NUMBER FOR ANY PREMIUM**
8 **CIGARS AND PIPE TOBACCO SOLD; AND**

9 **(II) FOR EACH STOCK KEEPING UNIT:**

10 **1. THE QUANTITY OF PREMIUM CIGARS AND PIPE**
11 **TOBACCO SOLD DURING THE RETURN PERIOD; AND**

12 **2. THE PRICE OF THE PREMIUM CIGARS AND PIPE**
13 **TOBACCO SOLD, AS DETERMINED UNDER § 12-105(C) OF THIS TITLE.**

14 13-825.

15 (h) (1) The Comptroller may require a person subject to the tobacco tax to post
16 security for the tax in the following amounts:

17 (i) for a manufacturer or wholesaler:

18 1. \$10,000; plus

19 2. the amount, if any, by which the tobacco tax due for any 1
20 month exceeds \$10,000;

21 (ii) for a subwholesaler or vending machine operator:

22 1. \$1,000; plus

23 2. the amount, if any, by which the tobacco tax due for any 1
24 month exceeds \$1,000; [and]

25 (iii) for an other tobacco products wholesaler:

26 1. \$5,000; plus

27 2. the amount, if any, by which the tobacco tax due for any 1
28 month exceeds \$5,000; AND

1 (IV) FOR AN OUT-OF-STATE SELLER:

2 1. \$5,000; PLUS

3 2. THE AMOUNT, IF ANY, BY WHICH THE TOBACCO TAX
4 DUE FOR ANY REPORTING PERIOD EXCEEDS \$5,000.

5 (2) Except as provided in paragraph (5) of this subsection, the Comptroller
6 may exempt a person from posting security for the tobacco tax if the person is and has been
7 for the past 5 years:

8 (i) licensed as required under § 16-202 of the Business Regulation
9 Article to act as a wholesaler [or], § 16.5-201 to act as an other tobacco products wholesaler,
10 **OR § 16.9-201 TO ACT AS A REMOTE TOBACCO SELLER;** and

11 (ii) 1. in continuous compliance with the tobacco tax laws, as
12 determined under paragraph (3) of this subsection; and

13 2. in continuous compliance with the conditions of the
14 person's security posted under this subsection.

15 (3) For purposes of paragraph (2) of this subsection, a person is in
16 continuous compliance with the tobacco tax laws for a period if the person has not, at any
17 time during that period:

18 (i) failed to pay any tobacco tax or any tobacco tax assessment when
19 due;

20 (ii) failed to file a tobacco tax return when due; or

21 (iii) otherwise violated any of the provisions of this title, Title 12 of
22 this article, or Title 16 [or], Title 16.5, **OR TITLE 16.9** of the Business Regulation Article.

23 (4) (i) An exemption granted under paragraph (2) of this subsection is
24 effective only to the extent that a person's potential tobacco tax liability does not exceed an
25 amount determined by the Comptroller based on the person's experience during the 5-year
26 compliance period under paragraph (2) of this subsection.

27 (ii) The Comptroller may revoke an exemption granted to a person
28 under paragraph (2) of this subsection if the person at any time fails to be in continuous
29 compliance with the tobacco tax laws, as described in paragraph (3) of this subsection.

30 (iii) The Comptroller may reinstate an exemption revoked under
31 subparagraph (ii) of this paragraph if the person meets the requirements of paragraph (2)(i)
32 and (ii) of this subsection for a period of 2 years following the revocation.

1 (5) The Comptroller may not exempt a person from posting a bond or other
2 security for the tobacco tax unless the Comptroller determines that the person is solvent
3 and financially able to pay the person’s potential tobacco tax liability.

4 (6) If a corporation is granted an exemption from posting a bond or other
5 security for the tobacco tax, any officer of the corporation who exercises direct control over
6 its fiscal management is personally liable for any tobacco tax, interest and penalties owed
7 by the corporation.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
9 1, 2022.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.