
By: Senators Forehand, Kelley, Frosh, and Van Hollen

Introduced and read first time: January 29, 1996

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Taxation of Smokeless Tobacco Products**

3 FOR the purpose of extending the tobacco tax to certain smokeless tobacco products;
4 setting the rate of the tobacco tax for smokeless tobacco products; defining certain
5 terms and altering certain definitions under the tobacco tax law; requiring the
6 Comptroller to establish by regulation a system of administering, collecting, and
7 enforcing the tobacco tax on smokeless tobacco products; defining certain terms
8 under the tobacco licensing law; requiring a person to have a license issued by the
9 Comptroller to act as a smokeless tobacco products wholesaler in the State;
10 establishing certain qualifications for an applicant for a smokeless tobacco products
11 wholesaler license; requiring an applicant to submit a certain application and pay
12 certain fees; prohibiting a person from acting or attempting or offering to act as a
13 smokeless tobacco products wholesaler in the State unless the person has a license;
14 and generally relating to the imposition of the tobacco tax on certain smokeless
15 tobacco products and certain licensing requirements for smokeless tobacco products
16 wholesalers.

17 BY repealing and reenacting, without amendments,

18 Article - Tax - General

19 Section 12-101(a)

20 Annotated Code of Maryland

21 (1988 Volume and 1995 Supplement)

22 BY adding to

23 Article - Tax - General

24 Section 12-101(b-1) and (c-1), 12-302(c), and 12-306

25 Annotated Code of Maryland

26 (1988 Volume and 1995 Supplement)

27 BY repealing and reenacting, with amendments,

28 Article - Tax - General

29 Section 12-101(f), 12-102, 12-103(a), 12-104, 12-105, 12-202, 12-203, and 13-408

30 Annotated Code of Maryland

31 (1988 Volume and 1995 Supplement)

2

1 BY repealing and reenacting, with amendments,
2 Article - Business Regulation
3 Section 16-201(b), (g), and (p), 16-202(a), 16-205(a), and 16-214
4 Annotated Code of Maryland
5 (1992 Volume and 1995 Supplement)

6 BY adding to
7 Article - Business Regulation
8 Section 16-201(j-1) and (j-2), 16-203(f), 16-204(f-1), 16-206(g), and 16-208(d)
9 Annotated Code of Maryland
10 (1992 Volume and 1995 Supplement)

11 BY repealing and reenacting, without amendments,
12 Article - Business Regulation
13 Section 16-204(h)(1)
14 Annotated Code of Maryland
15 (1992 Volume and 1995 Supplement)

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

18 **Article - Tax - General**

19 12-101.

20 (a) In this title the following words have the meanings indicated.

21 (B-1) "MANUFACTURER'S PRICE" MEANS THE PRICE FOR WHICH A
22 MANUFACTURER SELLS SMOKELESS TOBACCO PRODUCTS TO A WHOLESALER,
23 EXCLUSIVE OF ANY DISCOUNT, TRADE ALLOWANCE, REBATE, OR OTHER
24 REDUCTION.

25 (C-1) "SMOKELESS TOBACCO PRODUCT" MEANS ANY TOBACCO OR PRODUCT
26 MADE PRIMARILY FROM TOBACCO INTENDED FOR CONSUMPTION BY CHEWING OR
27 AS SNUFF.

28 (f) "Wholesaler" means, unless the context requires otherwise[.]:

29 (1) a person who acts as a wholesaler as defined in § 16-201 of the Business
30 Regulation Article; OR

31 (2) A PERSON WHO ACTS AS A SMOKELESS TOBACCO PRODUCTS
32 WHOLESALER AS DEFINED IN § 16-201 OF THE BUSINESS REGULATION ARTICLE.

33 12-102.

34 (a) Except as provided in § 12-104 of this title, a tax is imposed on cigarettes AND
35 SMOKELESS TOBACCO PRODUCTS in the State.

3

1 (b) A county, municipal corporation, special taxing district, or other political
2 subdivision of the State may not impose a tax on cigarettes OR SMOKELESS TOBACCO
3 PRODUCTS.

4 12-103.

5 (a) A rebuttable presumption exists that any cigarette OR SMOKELESS TOBACCO
6 PRODUCT in the State is subject to the tobacco tax.

7 12-104.

8 (a) "Consumer" means a person who possesses cigarettes OR SMOKELESS
9 TOBACCO PRODUCTS for a purpose other than selling or transporting the cigarettes OR
10 SMOKELESS TOBACCO PRODUCTS.

11 (b) The tobacco tax does not apply to cigarettes OR SMOKELESS TOBACCO
12 PRODUCTS that:

13 (1) a licensed wholesaler under Title 16 of the Business [Regulations]
14 REGULATION Article is holding for sale outside the State or to a UnitedStates armed
15 forces exchange or commissary;

16 (2) a consumer brings into the State:

17 (i) if the quantity brought from another state does not exceed:

18 1. for a nonresident consumer traveling through this State,
19 SMOKELESS TOBACCO PRODUCTS HAVING A RETAIL VALUE OF \$25 OR 1 carton OF
20 CIGARETTES; or

21 2. for any other consumer, SMOKELESS TOBACCO PRODUCTS
22 HAVING A RETAIL VALUE OF \$5 OR 2 packages OF CIGARETTES; or

23 (ii) if the quantity brought from a United States armed forces
24 installation or reservation does not exceed:

25 1. for a consumer who is a member of an armed forces unit or
26 who is entitled by law to make a purchase at an armed forces exchange, SMOKELESS
27 TOBACCO PRODUCTS HAVING A RETAIL VALUE OF \$50 OR 2 cartons OF CIGARETTES;
28 or

29 2. for any other consumer, SMOKELESS TOBACCO PRODUCTS
30 HAVING A RETAIL VALUE OF \$5 OR 2 packages OF CIGARETTES that were bought at an
31 armed forces exchange or commissary;

32 (3) a person is transporting by vehicle in the State if the person has, in the
33 vehicle, the records required by § 16-219 of the Business Regulation Article for the
34 transportation of cigarettes; or

35 (4) are held in storage in a licensed storage warehouse.

36 12-105.

37 (A) The tobacco tax rate FOR CIGARETTES is:

4

- 1 (1) 18 cents for each package of 10 or fewer cigarettes;
- 2 (2) 36 cents for each package of at least 11 and not more than 20 cigarettes;
- 3 (3) 1.8 cents for each cigarette in a package of more than 20 cigarettes; and
- 4 (4) 1.8 cents for each cigarette in a package of free sample cigarettes.

5 (B) THE TOBACCO TAX RATE FOR SMOKELESS TOBACCO PRODUCTS IS 25% OF
6 THE MANUFACTURER'S PRICE OF THE SMOKELESS TOBACCO PRODUCTS.

7 12-202.

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

10 (1) FOR CIGARETTES:

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

14 [(2)] (II) if the Comptroller so specifies, by regulation, on other dates for
15 each month in which the wholesaler does not have the first possession of any unstamped
16 cigarettes in the State; AND

17 (2) FOR SMOKELESS TOBACCO PRODUCTS, ON THE DATES AND FOR THE
18 PERIODS THAT THE COMPTROLLER SPECIFIES BY REGULATION.

19 (b) Each return shall state the quantity of cigarettes OR SMOKELESS TOBACCO
20 PRODUCTS sold during the period that the return covers.

21 12-203.

22 (a) Each wholesaler shall:

- 23 (1) keep an invoice for each purchase of tax stamps;
- 24 (2) maintain a daily record of the tax stamps affixed to cigarette packages;
- 25 and
- 26 (3) maintain a complete and accurate record of each sale of cigarettes OR
- 27 SMOKELESS TOBACCO PRODUCTS for resale outside of the State.

28 (b) A wholesaler shall:

- 29 (1) keep the records required under subsection (a) of this section for a
- 30 period of 6 years or for a shorter period that the Comptroller authorizes; and
- 31 (2) allow the Comptroller to examine the records.

32 12-302.

33 (C) (1) THE TOBACCO TAX ON SMOKELESS TOBACCO PRODUCTS SHALL BE
34 PAID BY THE WHOLESALER WHO SELLS THE SMOKELESS TOBACCO PRODUCTS TO A
35 RETAILER IN THE STATE.

5

1 (2) IF A RETAILER POSSESSES SMOKELESS TOBACCO PRODUCTS IN THE
2 STATE ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID, THE RETAILER SHALL
3 PAY THE TOBACCO TAX ON THOSE SMOKELESS TOBACCO PRODUCTS.

4 12-306.

5 (A) THE COMPTROLLER SHALL ESTABLISH, BY REGULATION, A SYSTEM OF
6 ADMINISTERING, COLLECTING, AND ENFORCING THE TOBACCO TAX ON SMOKELESS
7 TOBACCO PRODUCTS.

8 (B) REGULATIONS ADOPTED UNDER THIS SECTION MAY INCLUDE:

9 (1) SELF-ASSESSMENT, FILING OF RETURNS, AND MAINTENANCE AND
10 RETENTION OF RECORDS BY WHOLESALERS OR RETAILERS;

11 (2) PAYMENT OF THE TAX BY:

12 (I) A WHOLESALER WHO SELLS SMOKELESS TOBACCO PRODUCTS
13 TO A RETAILER IN THE STATE; OR

14 (II) A RETAILER WHO POSSESSES SMOKELESS TOBACCO PRODUCTS
15 IN THE STATE ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID; AND

16 (3) ANY OTHER PROVISION THAT THE COMPTROLLER CONSIDERS
17 NECESSARY TO EFFICIENTLY AND ECONOMICALLY ADMINISTER, COLLECT, AND
18 ENFORCE THE TAX.

19 13-408.

20 (a) If the Comptroller determines that a person has failed to keep the records of
21 out-of-state cigarette OR SMOKELESS TOBACCO PRODUCT sales required under §
22 12-203 of this article, the Comptroller shall:

23 (1) compute the tobacco tax as if the cigarettes OR SMOKELESS TOBACCO
24 PRODUCTS were sold in the State; and

25 (2) assess the tax due.

26 (b) If the Comptroller determines that a person has possessed or transported
27 cigarettes OR SMOKELESS TOBACCO PRODUCTS on which the tobacco tax has not been
28 paid as required under Title 12 of this article, the Comptroller shall assess the tobacco tax
29 due.

30 **Article - Business Regulation**

31 16-201.

32 (b) "License" means:

33 (1) a license issued by the Comptroller under § 16-205(a) of this subtitle to:

34 (i) act as a manufacturer;

35 (ii) act as a subwholesaler;

36 (iii) act as a vending machine operator;

6

1 (iv) act as a wholesaler; [or]

2 (v) act as a storage warehouse; or

3 (VI) ACT AS A SMOKELESS TOBACCO PRODUCTS WHOLESALER; OR

4 (2) a license issued by the clerk under § 16-205(b) of this subtitle to act as
5 a retailer.

6 (g) (1) "Licensed wholesaler" means a person licensed by the Comptroller
7 under § 16-205(a) of this subtitle to act as a wholesaler.

8 (2) "LICENSED WHOLESALER" DOES NOT INCLUDE A PERSON LICENSED
9 BY THE COMPTROLLER UNDER § 16-205 OF THIS SUBTITLE TO ACT AS A SMOKELESS
10 TOBACCO PRODUCTS WHOLESALER.

11 (J-1) "SMOKELESS TOBACCO PRODUCT" HAS THE MEANING STATED IN § 12-101
12 OF THE TAX - GENERAL ARTICLE.

13 (J-2) "SMOKELESS TOBACCO PRODUCTS WHOLESALER" MEANS A PERSON
14 WHO:

15 (1) HOLDS SMOKELESS TOBACCO PRODUCTS FOR SALE TO ANOTHER
16 PERSON FOR RESALE; OR

17 (2) SELLS SMOKELESS TOBACCO PRODUCTS TO ANOTHER PERSON FOR
18 RESALE.

19 (p) (1) "Wholesaler" means a person who:

20 [(1)] (I) holds cigarettes for sale to another person for resale; or

21 [(2)] (II) sells cigarettes to another person for resale.

22 (2) "WHOLESALER" DOES NOT INCLUDE A SMOKELESS TOBACCO
23 PRODUCTS WHOLESALER.

24 16-202.

25 (a) Except as provided in subsection (b) of this section, a person must have an
26 appropriate license whenever the person acts as a manufacturer, retailer, storage
27 warehouse, subwholesaler, vending machine operator, [or] wholesaler, ORSMOKELESS
28 TOBACCO PRODUCTS WHOLESALER in the State.

29 16-203.

30 (F) AN APPLICANT FOR A LICENSE TO ACT AS A SMOKELESS TOBACCO
31 PRODUCTS WHOLESALER SHALL MAINTAIN:

32 (1) AN ESTABLISHED PLACE OF BUSINESS, INCLUDING WAREHOUSE
33 FACILITIES, FOR THE SALE OF SMOKELESS TOBACCO PRODUCTS; AND

34 (2) NECESSARY EQUIPMENT AND VEHICLES FOR THE STORAGE AND
35 DISTRIBUTION OF SMOKELESS TOBACCO PRODUCTS.

7

1 16-204.

2 (F-1) AN APPLICANT FOR A LICENSE TO ACT AS A SMOKELESS TOBACCO
3 PRODUCTS WHOLESALER SHALL:

4 (1) SUBMIT AN APPLICATION TO THE COMPTROLLER ON THE FORM
5 AND CONTAINING THE INFORMATION THAT THE COMPTROLLER REQUIRES; AND

6 (2) PAY TO THE COMPTROLLER A FEE OF \$250.

7 (h) (1) In addition to the license fee otherwise required under this section:

8 (i) an applicant for the initial issuance of a license issued by the
9 Comptroller under this title shall pay to the Comptroller a nonrefundable application fee
10 of \$200; and

11 (ii) an applicant for renewal of a license issued by the Comptroller
12 under this title shall pay to the Comptroller a renewal fee of \$30.

13 16-205.

14 (a) The Comptroller shall issue an appropriate license to each applicant who
15 meets the requirements of this subtitle for a license to act as a manufacturer, storage
16 warehouse, subwholesaler, vending machine operator, [or] wholesaler, ORSMOKELESS
17 TOBACCO PRODUCTS WHOLESALER.

18 16-206.

19 (G) A SMOKELESS TOBACCO PRODUCTS WHOLESALER LICENSE AUTHORIZES
20 THE LICENSEE TO ACT AS A SMOKELESS TOBACCO PRODUCTS WHOLESALER.

21 16-208.

22 (D) (1) IF A LICENSED SMOKELESS TOBACCO PRODUCTS WHOLESALER
23 SELLS THE LICENSEE'S SMOKELESS TOBACCO PRODUCTS BUSINESS AND PAYS TO
24 THE COMPTROLLER A LICENSE ASSIGNMENT FEE OF \$10, THE LICENSEE MAY ASSIGN
25 THE LICENSE TO THE BUYER OF THE BUSINESS.

26 (2) IF THE SMOKELESS TOBACCO PRODUCTS BUSINESS OF A LICENSEE IS
27 TRANSFERRED BECAUSE OF BANKRUPTCY, DEATH, INCOMPETENCY, RECEIVERSHIP,
28 OR OTHERWISE BY OPERATION OF LAW, THE COMPTROLLER SHALL TRANSFER THE
29 LICENSE WITHOUT CHARGE TO THE NEW OWNER OF THE LICENSEE'S BUSINESS.

30 (3) IF A LICENSED SMOKELESS TOBACCO PRODUCTS WHOLESALER
31 SURRENDERS THE LICENSE TO THE COMPTROLLER AND IF NO DISCIPLINARY
32 PROCEEDINGS ARE PENDING AGAINST THE LICENSEE, THE COMPTROLLER SHALL
33 REFUND A PRO RATA PART OF THE LICENSE FEE FOR THE UNEXPIRED TERM OF THE
34 LICENSE.

35 16-214.

36 (a) Except as otherwise provided in § 16-202(b) of this subtitle, a person may not
37 act, attempt to act, or offer to act as a manufacturer, retailer, storage warehouse,
38 subwholesaler, vending machine operator, [or] wholesaler, OR SMOKELESS TOBACCO
39 PRODUCTS WHOLESALER in the State unless the person has an appropriate license.

8

1 (b) (1) A person who violates this section is guilty of a misdemeanor and, on
2 conviction, is subject to a fine of \$1,000 or imprisonment not exceeding 30 days or both.

3 (2) Each day that a violation of this section continues is a separate offense.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 1996.