

BY: Finance Committee

AMENDMENTS TO SENATE BILL NO. 582
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 4, after “law” insert “and the Maryland Cigarette Sales Below Cost Act”; in line 5, after ““manufacturer”” insert “for the cigarette business licensing law and the Maryland Cigarette Sales Below Cost Act”; in line 11, strike “licence” and substitute “license”; in line 14, after “circumstances;” insert “defining the term “manufacturer” for the tobacco tax law;”; and after line 21, insert:

“BY repealing and reenacting, with amendments,

Article - Commercial Law

Section 11-501 and 11-505

Annotated Code of Maryland

(2000 Replacement Volume and 2001 Supplement)

BY repealing and reenacting, with amendments,

Article - Tax - General

Section 12-101

Annotated Code of Maryland

(1997 Replacement Volume and 2001 Supplement)”.

AMENDMENT NO. 2

On page 3, in line 21, strike “CIGARETTE”.

On page 5, in line 21, strike the period and substitute a semicolon.

AMENDMENT NO. 3

On page 7, after line 12, insert:

(Over)

“Article - Commercial Law

11-501.

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

(b) “Basic cost of cigarettes” means the lesser of the invoice cost or the replacement cost of cigarettes to the retailer or wholesaler; plus any in-freight charge to the wholesaler otherwise not included in the invoice cost or the replacement cost; plus, for the wholesaler, the full face value of any applicable Maryland cigarette tax payable by the wholesaler; minus any trade discount or discount for cash.

(c) (1) “Cigarettes” means any size or shaped roll for smoking that is made of tobacco or tobacco mixed with another ingredient and wrapped in paper or in any other material except tobacco.

(2) “Cigarettes” does not include cigars.

(C-1) “CIGARETTE NONRESIDENT DEALER” MEANS A PERSON WHO HOLDS A CIGARETTE NONRESIDENT DEALER LICENSE PURSUANT TO § 16-201 OF THE BUSINESS REGULATION ARTICLE.

(d) (1) “Cost to the retailer”, subject to the special cost provisions of § 11-503 of this subtitle, means the basic cost of cigarettes to a retailer, which includes the cost to a wholesaler, plus a markup to cover his cost of doing business, which cost of doing business, in the absence of satisfactory proof of a lesser cost, is presumed to be 8 percent of the basic cost of cigarettes to him.

(2) As to each carton of 200 cigarettes, a fractional part of a cent equal to one-tenth of a cent or more in the cost to the retailer shall be rounded off to the next higher cent.

(e) (1) “Cost to the wholesaler”, subject to the special cost provisions of § 11-503 of this subtitle, means the basic cost of cigarettes to a wholesaler, plus a markup to cover his cost of doing business, which cost of doing business:

(i) Includes the cartage cost to a retailer; and

(ii) In the absence of satisfactory proof of a lesser cost, is presumed to be 5 percent of the basic cost of cigarettes to him.

(2) As to each carton of 200 cigarettes, a fractional part of a cent equal to one-tenth of a cent or more in the cost to the wholesaler shall be rounded off to the next higher cent.

(f) “Person” includes an individual, corporation, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(g) “Replacement cost” means the cost per unit for which the cigarettes could have been bought by the wholesaler or retailer at any time within 30 days before the date of sale by him if bought in the same quantity as his last purchase of the cigarettes.

(h) (1) “Retailer” includes any person engaged in the business of making retail sales of cigarettes within the State at a store, stand, booth, or concession, through vending machines, or otherwise.

(2) If the person is engaged in the business of making both retail sales of cigarettes and wholesale sales of cigarettes, the word only applies to the retail sales of cigarettes portion of the business.

(i) “Retail sale of cigarettes” includes any sale whereby cigarettes are sold for a valuable consideration, including an exchange or barter and a sale through a vending machine, made in the ordinary course of trade or the usual conduct of the seller's business to a purchaser for consumption or use other than resale.

(j) “Sell” includes advertise, offer to sell, or offer for sale.

(k) “Vending machine operator” means a person who:

(1) Makes retail sales of cigarettes or has cigarettes in his possession with the intent to sell them exclusively at retail through the medium of a vending machine or any other

mechanical device used for dispensing cigarettes;

(2) Owns, operates, and services vending machines or other mechanical devices used to dispense cigarettes on 40 or more premises; and

(3) Services the machines or devices by maintaining an established place of business for the purchase of cigarettes, including warehousing facilities for the storage and distribution of cigarettes.

(1) (1) “Wholesale sale of cigarettes” includes any sale whereby cigarettes are sold for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the seller's business to a retailer, other than to a vending machine operator or to a sub-wholesaler described in subsection (m)(2) of this section, for the bona fide purpose of resale.

(2) “Wholesale sale of cigarettes” includes any transfer of cigarettes on consignment or otherwise, whereby title is retained by the seller as security for the payment of the purchase price.

(m) (1) “Wholesaler” means a person who purchases cigarettes directly from a [manufacturer] CIGARETTE NONRESIDENT DEALER.

(2) “Wholesaler” includes a person, who, as a sub-wholesaler:

(i) Purchases cigarettes from another wholesaler solely for the purpose of bona fide resale to retailers other than those directly or indirectly owned, affiliated, or controlled by him; and

(ii) Services the retailers by maintaining an established place of business for the sale of cigarettes, including warehouse facilities, adequate inventory, proper accounting records, and necessary equipment and vehicles for the storage and distribution of cigarettes.

(3) If the person is engaged in the business of making both wholesale sales of cigarettes and retail sales of cigarettes, the word only applies to the wholesale sales of cigarettes portion of the business.

11-505.

(a) Except as provided in subsection (b) of this section, a retailer or wholesaler with intent to injure a competitor or to destroy or substantially lessen competition may not:

(1) Sell cigarettes in combination with any other item of merchandise if the other item is given free of charge or sold at a price below its cost to the retailer or its cost to the wholesaler, respectively, as defined in Subtitle 4 of this title;

(2) Sell cigarettes in combination with any other item of merchandise if the total sale price for the cigarettes and all other items included in the sale is less than the sum of:

(i) The cost to the retailer or the cost to the wholesaler, respectively, of the cigarettes; and

(ii) The cost to the retailer or the cost to the wholesaler, respectively, as defined in Subtitle 4 of this title, of all other items included in the sale, including items given free of charge in connection with the sale;

(3) Give cigarettes free of charge, except in the case of specially packaged [manufacturers'] CIGARETTE NONRESIDENT DEALERS' samples which are designated on the package as not to be sold; or

(4) Make any rebate, advertising allowance, or any other concession by any means or device in connection with the sale of cigarettes whereby the cigarettes are in effect sold below their cost to the retailer or their cost to the wholesaler, respectively.

(b) A retailer or wholesaler may pass on to a purchaser any reduction in cost which results from:

(1) Payment or compensation given by a [manufacturer of cigarettes] CIGARETTE NONRESIDENT DEALER on a uniform and nondiscriminatory basis for promotional

(Over)

services; or

(2) Any coupon issued and ultimately redeemed by a cigarette [manufacturer] NONRESIDENT DEALER.

Article - Tax - General

12-101.

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

(b) "Cigarette" means any size or shaped roll for smoking that is made of tobacco or tobacco mixed with another ingredient and wrapped in paper or in any other material except tobacco.

(B-1) "MANUFACTURER" MEANS A PERSON WHO:

(1) OPERATES A CIGARETTE MANUFACTURING PLANT IN THE UNITED STATES; AND

(2) HOLDS A CIGARETTE NONRESIDENT DEALER LICENSE PURSUANT TO § 16-201 OF THE BUSINESS REGULATION ARTICLE.

[(b-1)] (B-2) "Other tobacco product" means:

(1) any cigar or roll for smoking, other than a cigarette, made in whole or in part of tobacco; or

(2) any other tobacco or product made primarily from tobacco, other than a cigarette, that is intended for consumption by smoking or chewing or as snuff.

(c) "Sell" means to exchange or transfer, or to make an agreement to exchange or transfer, title or possession of property, in any manner or by any means, for consideration.

(d) "Tax stamp" means a device in the design and denomination that the Comptroller

authorizes by regulation for the purpose of being affixed to a package of cigarettes as evidence that the tobacco tax is paid.

(e) “Unstamped cigarettes” means a package of cigarettes to which tax stamps are not affixed in the amount and manner required in § 12-304 of this title.

(e-1) “Wholesale price” means the price for which a wholesaler buys other tobacco products, exclusive of any discount, trade allowance, rebate, or other reduction.

(f) “Wholesaler” means, unless the context requires otherwise:

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

(2) a person who:

(i) holds other tobacco products for sale to another person for resale; or

(ii) sells other tobacco products to another person for resale.”.