

HOUSE BILL 1001

Unofficial Copy
C2

2002 Regular Session
(2r2375)

ENROLLED BILL
-- Economic Matters/Finance --

Introduced by **Delegate Mitchell**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Cigarette Business Licensing Law - Cigarette Nonresident Dealers**

3 FOR the purpose of defining "cigarette nonresident dealer" for the cigarette business
4 licensing law; substituting the term "cigarette nonresident dealer" for the term
5 "manufacturer"; requiring a person who acts as a cigarette nonresident dealer in
6 the State to have a certain license; exempting certain persons from obtaining a
7 cigarette nonresident dealer license under certain circumstances; prohibiting a
8 licensed cigarette nonresident dealer from having certain interests in a
9 wholesaler; prohibiting a licensed wholesaler from having certain interests in a
10 cigarette nonresident dealer; prohibiting the issuance of a wholesaler license to
11 certain persons; requiring an applicant for a cigarette nonresident dealer licence
12 to maintain an established place of business for the sale of cigarettes;
13 authorizing a cigarette nonresident dealer licensee to sell certain cigarettes to
14 certain wholesalers under certain circumstances; and generally relating to
15 cigarette nonresident dealers under the cigarette business licensing law.

16 BY repealing and reenacting, with amendments,

1 Article - Business Regulation
2 Section 16-201, 16-202, 16-203(a), 16-204(a), 16-205(a), 16-206(a), (c), and (f),
3 16-210(a), and 16-214
4 Annotated Code of Maryland
5 (1998 Replacement Volume and 2001 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article - Commercial Law
8 Section 11-501 and 11-505
9 Annotated Code of Maryland
10 (2000 Replacement Volume and 2001 Supplement)

11 BY repealing and reenacting, with amendments,
12 Article - Tax - General
13 Section 12-101
14 Annotated Code of Maryland
15 (1997 Replacement Volume and 2001 Supplement)

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

18 **Article - Business Regulation**

19 16-201.

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

21 (b) "CIGARETTE NONRESIDENT DEALER" MEANS A PERSON LOCATED
22 OUTSIDE OF THE STATE WHO:

23 (1) SELLS UNSTAMPED CIGARETTES TO A LICENSED CIGARETTE
24 WHOLESALER LOCATED IN MARYLAND;

25 (2) UNLESS OTHERWISE PROHIBITED OR RESTRICTED UNDER LOCAL
26 LAW, THIS ARTICLE, THE TAX - GENERAL ARTICLE, OR ARTICLE 27 OF THE CODE,
27 DISTRIBUTES SAMPLE CIGARETTES TO CONSUMERS LOCATED IN MARYLAND; OR

28 (3) STORES UNSTAMPED CIGARETTES IN A CIGARETTE STORAGE
29 WAREHOUSE IN MARYLAND FOR SUBSEQUENT SHIPMENT TO LICENSED
30 WHOLESALERS, FEDERAL RESERVATIONS, OR PERSONS OUT OF STATE.

31 (C) "License" means:

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

34 (i) act as a [manufacturer] CIGARETTE NONRESIDENT DEALER;

1 (ii) act as a subwholesaler;

2 (iii) act as a vending machine operator;

3 (iv) act as a wholesaler; or

4 (v) act as a storage warehouse; or

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

7 [(c)] (D) "Licensed [manufacturer] CIGARETTE NONRESIDENT DEALER"
8 means a person licensed by the Comptroller under § 16-205(a) of this subtitle to act
9 as a [manufacturer] CIGARETTE NONRESIDENT DEALER.

10 [(d)] (E) "Licensed retailer" means a person licensed by the clerk under §
11 16-205(b) of this subtitle to act as a retailer.

12 [(e)] (F) "Licensed subwholesaler" means a person licensed by the
13 Comptroller under § 16-205(a) of this subtitle to act as a subwholesaler.

14 [(f)] (G) "Licensed vending machine operator" means a person licensed by the
15 Comptroller under § 16-205(a) of this subtitle to act as a vending machine operator.

16 [(g)] (H) "Licensed wholesaler" means a person licensed by the Comptroller
17 under § 16-205(a) of this subtitle to act as a wholesaler.

18 [(h)] (I) "Licensed storage warehouse" means a facility licensed by the
19 Comptroller under § 16-205(a) of this subtitle to act as a storage warehouse.

20 [(i)] "Manufacturer" means a person who:

21 (1) operates one or more cigarette manufacturing plants within the
22 United States; and

23 (2) (i) sells unstamped cigarettes to a licensed cigarette wholesaler
24 located in Maryland;

25 (ii) unless otherwise prohibited or restricted under local law, this
26 article, or Article 27 of the Code, distributes sample cigarettes to consumers located in
27 Maryland; or

28 (iii) stores unstamped cigarettes in a cigarette storage warehouse in
29 Maryland for subsequent shipment to licensed wholesalers, federal reservations, or
30 persons out of State.]

31 (j) "Retailer" means a person who:

32 (1) sells cigarettes to consumers through vending machines on fewer
33 than 40 premises;

1 (2) otherwise sells cigarettes to consumers; or

2 (3) holds cigarettes for sale to consumers.

3 (k) "Stamped cigarettes" means a package of cigarettes to which tobacco tax
4 stamps are affixed in the amount and manner required by § 12-304 of the Tax -
5 General Article.

6 (l) "Storage warehouse" means a storage facility in Maryland operated for the
7 purpose of storing unstamped cigarettes on behalf of a licensed cigarette
8 [manufacturer] CIGARETTE NONRESIDENT DEALER.

9 (m) (1) "Subwholesaler" means a person who:

10 (i) holds stamped cigarettes for sale to another person for resale; or

11 (ii) sells stamped cigarettes to another person for resale.

12 (2) "Subwholesaler" does not include a person who sells unstamped
13 cigarettes or holds unstamped cigarettes for sale.

14 (n) "Unstamped cigarettes" means a package of cigarettes to which tobacco tax
15 stamps are not affixed in the amount and manner required by § 12-304 of the Tax -
16 General Article.

17 (o) "Vending machine operator" means a person who:

18 (1) holds cigarettes for sale to consumers through vending machines on
19 40 or more premises; or

20 (2) sells cigarettes to consumers through vending machines on 40 or
21 more premises.

22 (p) "Wholesaler" means a person who:

23 (1) holds cigarettes for sale to another person for resale; or

24 (2) sells cigarettes to another person for resale.

25 16-202.

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

30 (b) (1) A person need not get a retailer license to act as a retailer at a
31 vending stand operated under a trader's license issued to Blind Industries and
32 Services of Maryland.

1 (2) A PERSON NEED NOT GET A CIGARETTE NONRESIDENT DEALER
2 LICENSE TO MAKE DIRECT SALES AND SHIPMENTS OF CIGARETTES TO A LICENSED
3 WHOLESALE WITHIN THIS STATE FROM A LOCATION OUTSIDE THE CONTINENTAL
4 LIMITS AND POSSESSIONS OF THE UNITED STATES.

5 (c) A license to act as a retailer is required for each place of business where a
6 person acts as a retailer.

7 (d) (1) A person licensed as a [manufacturer] CIGARETTE NONRESIDENT
8 DEALER, or person connected with the business of a licensed [manufacturer]
9 CIGARETTE NONRESIDENT DEALER or related by ownership, may not at the same
10 time hold or have any financial interest in a wholesaler license or in any business of
11 a wholesaler.

12 (2) A person licensed as a wholesaler, or person connected with the
13 business of a licensed wholesaler or related by ownership, may not at the same time
14 hold or have any financial interest in a [manufacturer] CIGARETTE NONRESIDENT
15 DEALER license or in any business of a [manufacturer] CIGARETTE NONRESIDENT
16 DEALER.

17 (3) A WHOLESALE LICENSE MAY NOT BE ISSUED TO ANY PERSON WHO:

18 (I) OPERATES A CIGARETTE MANUFACTURING PLANT; OR

19 (II) HAS A FINANCIAL INTEREST IN THE BUSINESS OF A CIGARETTE
20 NONRESIDENT DEALER.

21 16-203.

22 (a) An applicant for a license to act as a [manufacturer] CIGARETTE
23 NONRESIDENT DEALER shall maintain an established place of business for the
24 [manufacture and storage] SALE of cigarettes.

25 16-204.

26 (a) An applicant for a license to act as a [manufacturer] CIGARETTE
27 NONRESIDENT DEALER shall:

28 (1) submit an application to the Comptroller on the form and containing
29 the information that the Comptroller requires; and

30 (2) pay to the Comptroller a fee of \$25.

31 16-205.

32 (a) The Comptroller shall issue an appropriate license to each applicant who
33 meets the requirements of this subtitle for a license to act as a [manufacturer]
34 CIGARETTE NONRESIDENT DEALER, storage warehouse, subwholesaler, vending
35 machine operator, or wholesaler.

1 16-206.

2 (a) A [manufacturer] CIGARETTE NONRESIDENT DEALER license authorizes
3 the licensee to:

4 (1) sell unstamped cigarettes to a licensed cigarette wholesaler located in
5 Maryland IF THE CIGARETTE NONRESIDENT DEALER[;]:

6 (I) IS THE OWNER OF THE BRAND;

7 (II) IS THE UNITED STATES IMPORTER OF THE BRAND; OR

8 (III) IS A DESIGNATED AGENT IN MARYLAND OF:

9 1. THE OWNER OF THE BRAND; OR

10 2. THE UNITED STATES IMPORTER OF THE BRAND.

11 (2) except as otherwise prohibited or restricted under local law, this
12 article, THE TAX - GENERAL ARTICLE, or Article 27 of the Code, distribute sample
13 cigarettes to consumers located in Maryland;

14 (3) store unstamped cigarettes in a licensed cigarette storage warehouse
15 for subsequent shipment to licensed wholesalers, federal reservations, or persons out
16 of State; and

17 (4) upon approval of the Comptroller, act as an agent of a Maryland
18 licensed wholesaler for stamping and distribution of cigarettes.

19 (c) A storage warehouse license authorizes the licensee to operate a storage
20 facility in Maryland for the purpose of storing unstamped cigarettes on behalf of a
21 licensed cigarette [manufacturer] NONRESIDENT DEALER.

22 (f) A wholesaler license authorizes the licensee to:

23 (1) act as a wholesaler;

24 (2) buy unstamped cigarettes directly from a cigarette [manufacturer]
25 NONRESIDENT DEALER;

26 (3) hold unstamped cigarettes;

27 (4) buy tobacco tax stamps as authorized by § 12-303 of the Tax -
28 General Article;

29 (5) transport unstamped cigarettes in the State;

30 (6) sell unstamped cigarettes to another licensed wholesaler if the
31 Comptroller specifically authorizes; and

1 (7) upon approval of the Comptroller, designate a licensed
2 [manufacturer] CIGARETTE NONRESIDENT DEALER to act as its agent for the
3 stamping and distribution of cigarettes.

4 16-210.

5 (a) Subject to the hearing provisions of § 16-211 of this subtitle, the
6 Comptroller may deny a license to an applicant, reprimand a licensee, or suspend or
7 revoke a license if the applicant or licensee:

8 (1) fraudulently or deceptively obtains or attempts to obtain a license for
9 the applicant or licensee or for another person;

10 (2) fraudulently or deceptively uses a license;

11 (3) fails to comply with the Maryland Cigarette Sales Below Cost Act or
12 regulations adopted under that Act;

13 (4) fails to comply with the provisions of Title 11, Subtitle 5A of the
14 Commercial Law Article;

15 (5) buys cigarettes for resale:

16 (i) in violation of a license; or

17 (ii) from a person who is not a cigarette [manufacturer]
18 NONRESIDENT DEALER, licensed subwholesaler, licensed vending machine operator,
19 or licensed wholesaler;

20 (6) is convicted, under the laws of the United States or of any other state,
21 of:

22 (i) a felony; or

23 (ii) a misdemeanor that is a crime of moral turpitude and is directly
24 related to the fitness and qualification of the applicant or licensee; or

25 (7) has not paid a tax due before October 1 of the year after the tax
26 became due.

27 16-214.

28 (a) Except as otherwise provided in § 16-202(b) of this subtitle, a person may
29 not act, attempt to act, or offer to act as a [manufacturer] CIGARETTE NONRESIDENT
30 DEALER, retailer, storage warehouse, subwholesaler, vending machine operator, or
31 wholesaler in the State unless the person has an appropriate license.

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

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

3 **Article - Commercial Law**

4 11-501.

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

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

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

14 (2) "Cigarettes" does not include cigars.

15 (C-1) "CIGARETTE NONRESIDENT DEALER" MEANS A PERSON WHO HOLDS A
16 CIGARETTE NONRESIDENT DEALER LICENSE PURSUANT TO ~~SECTION~~ § 16-201 OF THE
17 BUSINESS REGULATION ARTICLE.

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

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

26 (e) (1) "Cost to the wholesaler", subject to the special cost provisions of §
27 11-503 of this subtitle, means the basic cost of cigarettes to a wholesaler, plus a
28 markup to cover his cost of doing business, which cost of doing business:

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

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

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

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

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

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

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

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

18 (j) "Sell" includes advertise, offer to sell, or offer for sale.

19 (k) "Vending machine operator" means a person who:

20 (1) Makes retail sales of cigarettes or has cigarettes in his possession
21 with the intent to sell them exclusively at retail through the medium of a vending
22 machine or any other mechanical device used for dispensing cigarettes;

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

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

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

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

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

1 (2) "Wholesaler" includes a person, who, as a sub-wholesaler:

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

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

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

12 11-505.

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

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

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

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

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

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

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

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

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

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

6 **Article - Tax - General**

7 12-101.

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

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

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

13 ~~(H)~~ (1) OPERATES A CIGARETTE MANUFACTURING PLANT IN THE
14 UNITED STATES; AND

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

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

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

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

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

25 (d) "Tax stamp" means a device in the design and denomination that the
26 Comptroller authorizes by regulation for the purpose of being affixed to a package of
27 cigarettes as evidence that the tobacco tax is paid.

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

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

33 (f) "Wholesaler" means, unless the context requires otherwise:

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

3 (2) a person who:

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

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

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2002.