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By: **Delegate Mitchell**

Introduced and read first time: February 8, 2002

Assigned to: Economic Matters

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Committee Report: Favorable

House action: Adopted

Read second time: March 18, 2002

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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,  
17 Article - Business Regulation  
18 Section 16-201, 16-202, 16-203(a), 16-204(a), 16-205(a), 16-206(a), (c), and (f),  
19 16-210(a), and 16-214  
20 Annotated Code of Maryland  
21 (1998 Replacement Volume and 2001 Supplement)

22 BY repealing and reenacting, with amendments,  
23 Article - Commercial Law  
24 Section 11-501 and 11-505  
25 Annotated Code of Maryland

1 (2000 Replacement Volume and 2001 Supplement)

2 BY repealing and reenacting, with amendments,

3 Article - Tax - General

4 Section 12-101

5 Annotated Code of Maryland

6 (1997 Replacement Volume and 2001 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article - Business Regulation**

10 16-201.

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

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

14 (1) SELLS UNSTAMPED CIGARETTES TO A LICENSED CIGARETTE  
15 WHOLESALE LOCATED IN MARYLAND;

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

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

22 (C) "License" means:

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

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

26 (ii) act as a subwholesaler;

27 (iii) act as a vending machine operator;

28 (iv) act as a wholesaler; or

29 (v) act as a storage warehouse; or

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

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

4 [(d)] (E) "Licensed retailer" means a person licensed by the clerk under §  
5 16-205(b) of this subtitle to act as a retailer.

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

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

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

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

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

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

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

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

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

25 [(j)] "Retailer" means a person who:

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

28 (2) otherwise sells cigarettes to consumers; or

29 (3) holds cigarettes for sale to consumers.

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

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

- 1 (m) (1) "Subwholesaler" means a person who:
- 2 (i) holds stamped cigarettes for sale to another person for resale; or
- 3 (ii) sells stamped cigarettes to another person for resale.

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

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

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

10 (1) holds cigarettes for sale to consumers through vending machines on  
11 40 or more premises; or

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

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

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

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

17 16-202.

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

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

25 (2) A PERSON NEED NOT GET A CIGARETTE NONRESIDENT DEALER  
26 LICENSE TO MAKE DIRECT SALES AND SHIPMENTS OF CIGARETTES TO A LICENSED  
27 WHOLESALER WITHIN THIS STATE FROM A LOCATION OUTSIDE THE CONTINENTAL  
28 LIMITS AND POSSESSIONS OF THE UNITED STATES.

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

31 (d) (1) A person licensed as a [manufacturer] CIGARETTE NONRESIDENT  
32 DEALER, or person connected with the business of a licensed [manufacturer]  
33 CIGARETTE NONRESIDENT DEALER or related by ownership, may not at the same  
34 time hold or have any financial interest in a wholesaler license or in any business of  
35 a wholesaler.

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

6 (3) A WHOLESALER LICENSE MAY NOT BE ISSUED TO ANY PERSON WHO:

7 (I) OPERATES A CIGARETTE MANUFACTURING PLANT; OR

8 (II) HAS A FINANCIAL INTEREST IN THE BUSINESS OF A CIGARETTE  
9 NONRESIDENT DEALER.

10 16-203.

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

14 16-204.

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

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

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

20 16-205.

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

25 16-206.

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

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

30 (I) IS THE OWNER OF THE BRAND;

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

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

33 1. THE OWNER OF THE BRAND; OR

## 2. THE UNITED STATES IMPORTER OF THE BRAND.

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

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

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

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

(f) A wholesaler license authorizes the licensee to:

(1) act as a wholesaler;

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

(3) hold unstamped cigarettes;

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

(5) transport unstamped cigarettes in the State;

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

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

16-210.

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

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

(2) fraudulently or deceptively uses a license;

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

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

3 (5) buys cigarettes for resale:

4 (i) in violation of a license; or

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

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

10 (i) a felony; or

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

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

15 16-214.

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

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

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

25 **Article - Commercial Law**

26 11-501.

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

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

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

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

5 (C-1) "CIGARETTE NONRESIDENT DEALER" MEANS A PERSON WHO HOLDS A  
6 CIGARETTE NONRESIDENT DEALER LICENSE PURSUANT TO SECTION 16-201 OF THE  
7 BUSINESS REGULATION ARTICLE.

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

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

16 (e) (1) "Cost to the wholesaler", subject to the special cost provisions of §  
17 11-503 of this subtitle, means the basic cost of cigarettes to a wholesaler, plus a  
18 markup to cover his cost of doing business, which cost of doing business:

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

1 11-505.

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

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

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

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

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

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

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

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

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

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

30 **Article - Tax - General**

31 12-101.

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

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

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

2 (I) OPERATES A CIGARETTE MANUFACTURING PLANT IN THE  
3 UNITED STATES; AND

4 (II) HOLDS A CIGARETTE NONRESIDENT DEALER LICENSE  
5 PURSUANT TO SECTION 16-201 OF THE BUSINESS REGULATION ARTICLE.

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

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

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

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

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

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

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

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

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

25 (2) a person who:

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

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

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

