
By: **Senators Ruben, Forehand, Hollinger, Kelley, and Teitelbaum**

Introduced and read first time: February 4, 2005

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Tobacco Products - Prohibitions on Delivery**

3 FOR the purpose of prohibiting a person in the business of manufacturing,
4 distributing, or selling tobacco products from delivering or causing to be
5 delivered any tobacco products except in a certain manner; authorizing a person
6 in the business of manufacturing, distributing, or selling tobacco products to
7 deliver tobacco products to certain recipients in a certain manner; prohibiting
8 delivery of tobacco products to individuals under a certain age or to residences;
9 applying the prohibitions of this Act to tobacco products purchased through a
10 computer or other electronic network; requiring the Attorney General and the
11 Comptroller to develop and make available certain information; authorizing the
12 Attorney General and the Comptroller to adopt regulations; establishing
13 penalties for a violation of this Act; authorizing the recovery of certain costs;
14 defining certain terms; and generally relating to the delivery of tobacco
15 products.

16 BY adding to

17 Article - Business Regulation

18 Section 16-601 through 16-606, inclusive, to be under the new subtitle "Subtitle
19 6. Tobacco Product Transport"

20 Annotated Code of Maryland

21 (2004 Replacement Volume)

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

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

24 **Article - Business Regulation**

25 **SUBTITLE 6. TOBACCO PRODUCT TRANSPORT.**

26 16-601.

27 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
28 INDICATED.

1 (B) "COMPTROLLER" INCLUDES ANY AUTHORIZED AGENT OF THE
2 COMPTROLLER WHO IS RESPONSIBLE FOR COLLECTION OF THE EXCISE TAX ON
3 CIGARETTES.

4 (C) "TOBACCO PRODUCT" MEANS ANY CONSUMABLE SUBSTANCE THAT
5 CONTAINS TOBACCO, INCLUDING CIGARETTES, CIGARS, SMOKING TOBACCO, SNUFF,
6 OR SMOKELESS TOBACCO.

7 16-602.

8 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERSON IN
9 THE BUSINESS OF MANUFACTURING, DISTRIBUTING, OR SELLING TOBACCO
10 PRODUCTS MAY NOT DELIVER OR CAUSE TO BE DELIVERED ANY TOBACCO
11 PRODUCTS TO A PERSON EXCEPT IN A FACE-TO-FACE TRANSACTION ON DELIVERY.

12 (B) A PERSON IN THE BUSINESS OF MANUFACTURING, DISTRIBUTING, OR
13 SELLING TOBACCO PRODUCTS MAY DELIVER TOBACCO PRODUCTS TO A PERSON
14 OTHER THAN IN A FACE-TO-FACE TRANSACTION IF:

15 (1) THE CONTAINER OR WRAPPING IS VISIBLY MARKED WITH THE
16 WORDS "TOBACCO PRODUCTS"; AND

17 (2) THE DELIVERY IS FOR PURPOSES OTHER THAN PERSONAL
18 CONSUMPTION BY A RECIPIENT WHO IS ONE OF THE FOLLOWING:

19 (I) A LICENSED TOBACCO WHOLESALER UNDER § 16-201 OF THIS
20 TITLE;

21 (II) A LICENSED RETAILER UNDER § 16-202 OR § 16-301 OF THIS
22 TITLE;

23 (III) A MANUFACTURER, IMPORTER, OR EXPORT PROPRIETOR WITH
24 A FEDERAL PERMIT UNDER 26 U.S.C. § 5712;

25 (IV) AN OPERATOR OF A CUSTOMS BONDED WAREHOUSE UNDER 19
26 U.S.C. §§ 1311 AND 1555; OR

27 (V) AN INDIVIDUAL WHO IS AN OFFICER, EMPLOYEE, OR AGENT OF
28 THE STATE OR THE UNITED STATES, OR A DEPARTMENT, AGENCY, OR POLITICAL
29 SUBDIVISION OF THE STATE OR THE UNITED STATES, WHEN ACTING IN
30 ACCORDANCE WITH THE INDIVIDUAL'S OFFICIAL DUTIES.

31 (C) A PERSON IN THE BUSINESS OF MANUFACTURING, DISTRIBUTING, OR
32 SELLING TOBACCO PRODUCTS MAY NOT KNOWINGLY DELIVER OR CAUSE TO BE
33 DELIVERED ANY TOBACCO PRODUCT TO:

34 (1) AN INDIVIDUAL UNDER THE LEGAL MINIMUM PURCHASE AGE TO
35 PURCHASE TOBACCO PRODUCTS IN THE STATE OR IN THE POLITICAL SUBDIVISION
36 WHERE THE INDIVIDUAL RESIDES;

1 (2) ANY RESIDENCE; OR

2 (3) ANY PERSON OTHER THAN A PERSON DESCRIBED IN SUBSECTION (B)
3 OF THIS SECTION.

4 (D) THE PROHIBITIONS OF THIS SECTION APPLY TO TOBACCO PRODUCTS
5 THAT ARE ORDERED OR PURCHASED THROUGH A COMPUTER OR OTHER
6 ELECTRONIC NETWORK.

7 16-603.

8 (A) THE COMPTROLLER SHALL DEVELOP AND MAKE AVAILABLE FOR PUBLIC
9 INSPECTION A DIRECTORY LISTING ALL PERSONS LICENSED OR REGISTERED BY THE
10 STATE AS WHOLESALERS OR RETAILERS, AS DESCRIBED IN § 16-602 OF THIS
11 SUBTITLE.

12 (B) THE COMPTROLLER SHALL UPDATE THE DIRECTORY AS NECESSARY IN
13 ORDER TO CORRECT MISTAKES AND TO ADD OR REMOVE A PERSON TO KEEP THE
14 DIRECTORY IN CONFORMITY WITH THE REQUIREMENTS OF THIS SECTION.

15 (C) THE COMPTROLLER SHALL PROVIDE NOTICE TO ALL PERSONS WHOSE
16 NAMES APPEAR IN THE DIRECTORY.

17 16-604.

18 A COMMON CARRIER IS NOT SUBJECT TO ANY OF THE PENALTIES OF THIS
19 SUBTITLE UNLESS THE CARRIER HAS KNOWLEDGE OR IS IN POSSESSION OF FACTS
20 WHICH WOULD CAUSE A REASONABLE PERSON TO BELIEVE THE DELIVERY IS IN
21 VIOLATION OF THIS SUBTITLE.

22 16-605.

23 (A) A PERSON WHO VIOLATES THIS SUBTITLE:

24 (1) IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

25 (I) FOR A FIRST VIOLATION, A FINE NOT EXCEEDING \$5,000 OR
26 500% OF THE VALUE OF THE TOBACCO PRODUCTS IN VIOLATION OF THIS SUBTITLE,
27 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH; AND

28 (II) FOR EACH SUBSEQUENT VIOLATION, A FINE NOT EXCEEDING
29 \$10,000 OR 1000% OF THE VALUE OF THE TOBACCO PRODUCTS IN VIOLATION OF THIS
30 SUBTITLE, OR IMPRISONMENT NOT EXCEEDING 5 YEARS OR BOTH; AND

31 (2) (I) SHALL FORFEIT POSSESSION OF ALL LICENSES HELD UNDER
32 THIS TITLE; AND

33 (II) IS INELIGIBLE TO POSSESS A LICENSE UNDER THIS TITLE FOR
34 A PERIOD NOT EXCEEDING 5 YEARS.

1 (B) IN ADDITION TO THE PENALTIES PROVIDED IN SUBSECTION (A) OF THIS
2 SECTION, A PERSON ENGAGED IN THE BUSINESS OF MANUFACTURING,
3 DISTRIBUTING, OR SELLING TOBACCO PRODUCTS IN VIOLATION OF § 16-602(A) OF
4 THIS SUBTITLE SHALL REIMBURSE THE STATE AND ITS POLITICAL SUBDIVISIONS
5 FOR ALL UNPAID TAXES RELATING TO THE TOBACCO PRODUCTS PLUS INTEREST.

6 (C) AN EMPLOYEE OF A CARRIER SERVICE WHO DELIVERS CIGARETTES THAT
7 THE PERSON KNOWS OR SHOULD KNOW ARE IN VIOLATION OF THIS SUBTITLE IS
8 SUBJECT TO THE PENALTIES OF THIS SUBTITLE.

9 (D) (1) ANY CIGARETTES THAT HAVE BEEN SOLD, OFFERED FOR SALE, OR
10 POSSESSED FOR SALE IN THE STATE, OR IMPORTED FOR PERSONAL CONSUMPTION
11 IN THE STATE IN VIOLATION OF THIS SUBTITLE ARE DEEMED CONTRABAND, AND
12 THOSE CIGARETTES ARE SUBJECT TO SEIZURE AND FORFEITURE.

13 (2) ALL CIGARETTES SEIZED AND FORFEITED MAY NOT BE RESOLD AND
14 SHALL BE DESTROYED.

15 16-606.

16 (A) THE ATTORNEY GENERAL AND THE COMPTROLLER MAY ADOPT
17 REGULATIONS NECESSARY TO CARRY OUT THE PURPOSES OF THIS SUBTITLE.

18 (B) THE ATTORNEY GENERAL SHALL MAKE PUBLIC:

19 (1) A LIST OF ALL ACTIONS TAKEN TO ENFORCE THIS SUBTITLE;

20 (2) A LIST OF ALL PERSONS WITH CONVICTIONS FOR VIOLATIONS OF
21 THIS SUBTITLE; AND

22 (3) ANY OTHER INFORMATION THE ATTORNEY GENERAL CONSIDERS
23 USEFUL TO OTHER JURISDICTIONS ENFORCING LAWS PROHIBITING OR
24 RESTRICTING TOBACCO SALES FOR PERSONAL CONSUMPTION WHEN THE
25 TRANSACTION IS NOT COMPLETED IN A FACE-TO-FACE TRANSACTION.

26 (C) IN ANY ACTION BROUGHT BY THE STATE TO ENFORCE THIS SUBTITLE,
27 THE STATE IS ENTITLED TO RECOVER THE COSTS OF INVESTIGATIONS, COSTS OF
28 THE ACTIONS, AND REASONABLE ATTORNEY'S FEES.

29 (D) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN AMOUNT EQUAL
30 TO 50% OF ALL CRIMINAL AND CIVIL FINES RECOVERED BY THE STATE UNDER THIS
31 SUBTITLE SHALL BE REMITTED TO THE STATE COMPTROLLER AND TO OTHER STATE
32 OFFICES OR AGENCIES, IN PROPORTION TO THEIR PARTICIPATION IN THE
33 ENFORCEMENT OF THIS SUBTITLE AND RELATED INVESTIGATIONS.

34 (E) (1) IF A COURT DETERMINES THAT A PERSON HAS VIOLATED THIS
35 SUBTITLE, THE COURT SHALL ORDER ANY PROFITS, GAIN, GROSS RECEIPTS, OR
36 OTHER BENEFIT FROM THE VIOLATION TO BE PAID TO THE STATE TREASURER FOR
37 DEPOSIT INTO THE CIGARETTE RESTITUTION FUND ESTABLISHED UNDER § 7-317 OF
38 THE STATE FINANCE AND PROCUREMENT ARTICLE.

1 (2) UNLESS OTHERWISE EXPRESSLY PROVIDED, THE REMEDIES OR
2 PENALTIES PROVIDED BY THIS SUBTITLE ARE CUMULATIVE TO EACH OTHER AND TO
3 THE REMEDIES OR PENALTIES AVAILABLE UNDER ALL OTHER LAWS OF THIS STATE.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2005.