

SENATE BILL 383

Q7

8lr2770

By: **Senators Currie and McFadden**

Introduced and read first time: January 30, 2008

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 20, 2008

CHAPTER _____

1 AN ACT concerning

2 **Tobacco Tax – Moist Snuff ~~and Little Cigars~~**

3 FOR the purpose of ~~altering the application of the tobacco tax to certain cigars~~
4 ~~weighing less than a certain amount~~; altering the tobacco tax rate for certain
5 tobacco intended to be placed in the oral cavity; requiring that certain tobacco
6 tax revenues be distributed to the Cigarette Restitution Fund for certain
7 purposes; requiring certain revenues to be appropriated for certain activities
8 aimed at cancer research; ~~providing a certain rate of tax for certain cigars;~~
9 ~~requiring a manufacturer that distributes free sample little cigars in the State~~
10 ~~to complete and file certain returns and pay certain tax on those little cigars;~~
11 altering the information required to be stated in a tobacco tax return; requiring
12 ~~that little cigars be sold in a certain manner~~; defining certain terms; and
13 generally relating to the taxation ~~and packaging~~ of certain tobacco products.

14 BY repealing and reenacting, with amendments,

15 Article – State Finance and Procurement

16 Section 7-317(b) and (g)

17 Annotated Code of Maryland

18 (2006 Replacement Volume and 2007 Supplement)

19 BY adding to

20 Article – Tax – General

21 Section 2-1602.1 and 12-101(b-1) ~~and (b-2)~~

22 Annotated Code of Maryland

23 (2004 Replacement Volume and 2007 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,
 2 Article – Tax – General
 3 Section ~~12-101(e), 12-201, 12-202, and 12-302(a)~~ 2-1603 and 12-202
 4 Annotated Code of Maryland
 5 (2004 Replacement Volume and 2007 Supplement)

6 BY repealing and reenacting, with amendments,
 7 Article – Tax – General
 8 Section 12-105
 9 Annotated Code of Maryland
 10 (2004 Replacement Volume and 2007 Supplement)
 11 (As enacted by Chapter 6 of the Acts of the General Assembly of the 2007
 12 Special Session)

13 ~~BY adding to~~
 14 ~~Article – Commercial Law~~
 15 ~~Section 11-5B-01 through 11-5B-03 to be under the new subtitle “Subtitle 5B-~~
 16 ~~Little Cigar Sales of Fewer Than Five Per Package”~~
 17 ~~Annotated Code of Maryland~~
 18 ~~(2005 Replacement Volume and 2007 Supplement)~~

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

21 **Article – State Finance and Procurement**

22 7-317.

23 (b) (1) The Fund is a continuing, nonlapsing fund that is not subject to §
 24 7-302 of this subtitle.

25 (2) There shall be credited to the Fund all revenues consisting of funds
 26 received by the State from any source resulting, directly or indirectly, from any
 27 judgment against or settlement with tobacco product manufacturers, tobacco research
 28 associations, or any other person in the tobacco industry relating to litigation,
 29 administrative proceedings, or any other claims made or prosecuted by the State to
 30 recover damages for violations of State law.

31 (3) There shall be credited to the Fund all moneys collected under §
 32 24-508 of the Health – General Article or § 5-608 of the Labor and Employment
 33 Article.

34 (4) **THERE SHALL BE CREDITED TO THE FUND ALL MONEYS**
 35 **DISTRIBUTED TO THE FUND UNDER § 2-1602.1 OF THE TAX – GENERAL**
 36 **ARTICLE.**

1 (g) (1) Amounts may only be expended from the Fund through
 2 appropriations in the State budget bill as provided in this subsection.

3 (2) The Governor shall include in the annual budget bill
 4 appropriations from the Fund equivalent to the lesser of \$100,000,000 or 90% of the
 5 funds estimated to be available to the Fund in the fiscal year for which the
 6 appropriations are made.

7 (3) For each fiscal year for which appropriations are made, at least
 8 50% of the appropriations shall be made for those purposes enumerated in subsection
 9 (f)(1)(i), (ii), and (iii)1 through 9 of this section subject to the requirement of subsection
 10 (e)(2) of this section.

11 (4) For each fiscal year for which appropriations are made, at least
 12 30% of the appropriations shall be made for the purposes of the Maryland Medical
 13 Assistance Program.

14 (5) For each fiscal year for which appropriations are made, 0.15% of
 15 the Fund shall be appropriated for the purposes of enforcement of Title 16, Subtitle 5
 16 of the Business Regulation Article.

17 **(6) FOR EACH FISCAL YEAR FOR WHICH APPROPRIATIONS ARE**
 18 **MADE, THE TOBACCO TAX REVENUE COLLECTED FROM MOIST SNUFF**
 19 **DISTRIBUTED TO THE FUND SHALL BE APPROPRIATED FOR ACTIVITIES AIMED**
 20 **AT CANCER RESEARCH.**

21 **[(6)] (7) Any additional appropriations, not subject to paragraph (3),**
 22 **paragraph (4), [or] paragraph (5), OR PARAGRAPH (6) of this subsection, may be**
 23 **made for any lawful purpose.**

24 **Article - Tax - General**

25 **2-1602.1.**

26 **AFTER MAKING THE DISTRIBUTIONS REQUIRED UNDER §§ 2-1601 AND**
 27 **2-1602 OF THIS SUBTITLE, THE COMPTROLLER SHALL DISTRIBUTE THE**
 28 **REVENUE COLLECTED FROM THE TOBACCO TAX IMPOSED ON MOIST SNUFF**
 29 **UNDER § 12-105(B)(2) OF THIS ARTICLE TO THE CIGARETTE RESTITUTION**
 30 **FUND FOR THE PURPOSES SPECIFIED UNDER § 7-317(G)(6) OF THE STATE**
 31 **FINANCE AND PROCUREMENT ARTICLE.**

32 **2-1603.**

1 After making the distributions required under §§ 2-1601 [and 2-1602]
 2 THROUGH 2-1602.1 of this subtitle, the Comptroller shall distribute the remaining
 3 tobacco tax revenue to the General Fund of the State.

4 12-101.

5 ~~(B-1) "LITTLE CIGAR" MEANS ANY ROLL FOR SMOKING THAT:~~

6 ~~(1) IS MADE OF TOBACCO OR TOBACCO MIXED WITH ANOTHER~~
 7 ~~INGREDIENT;~~

8 ~~(2) IS WRAPPED IN A LEAF OF TOBACCO OR IN ANY OTHER~~
 9 ~~MATERIAL CONTAINING TOBACCO; AND~~

10 ~~(3) (I) WEIGHS LESS THAN 3 POUNDS PER THOUSAND; OR~~

11 ~~(II) MEETS THE FOLLOWING CRITERIA:~~

12 ~~1. IS MACHINE PRODUCED;~~

13 ~~2. HAS A DIAMETER OF LESS THAN ONE HALF INCH;~~

14 ~~3. CONTAINS PIPE TOBACCO; AND~~

15 ~~4. HAS A WHOLESALE PRICE PER STICK OF LESS~~
 16 ~~THAN \$1.25.~~

17 ~~(B-2) (B-1) (1) "MOIST SNUFF" MEANS ANY FINELY CUT, GROUND, OR~~
 18 ~~POWDERED TOBACCO THAT IS NOT INTENDED TO BE SMOKED.~~

19 ~~(2) "MOIST SNUFF" DOES NOT INCLUDE ANY TOBACCO THAT IS~~
 20 ~~INTENDED TO BE PLACED IN THE NASAL CAVITY.~~

21 ~~(e) (1) "Other tobacco product" means:~~

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

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

27 ~~(2) "OTHER TOBACCO PRODUCT" INCLUDES A LITTLE CIGAR.~~

28 12-105.

1 (a) The tobacco tax rate for cigarettes ~~AND LITTLE CIGARS~~ is:

2 (1) \$1.00 for each package of 10 or fewer cigarettes ~~OR LITTLE~~
3 ~~CIGARS~~;

4 (2) \$2.00 for each package of at least 11 and not more than 20
5 cigarettes ~~OR LITTLE CIGARS~~;

6 (3) 10.0 cents for each cigarette in a package of more than 20
7 cigarettes ~~OR LITTLE CIGARS~~; and

8 (4) 10.0 cents for each cigarette in a package of free sample cigarettes
9 ~~OR LITTLE CIGARS~~.

10 (b) (1) [The] ~~EXCEPT FOR LITTLE CIGARS AND~~ MOIST SNUFF, THE
11 tobacco tax rate for other tobacco products is 15% of the wholesale price of the tobacco
12 products.

13 (2) ~~FOR MOIST SNUFF, THE TOBACCO TAX RATE IS 54 39 CENTS~~
14 ~~PER FOR UP TO ONE OUNCE AND A PROPORTIONATE AMOUNT FOR EACH~~
15 ~~FRACTION OF AN OUNCE IN EXCESS OF A WHOLE OUNCE OF NET WEIGHT AS~~
16 ~~LISTED BY THE MANUFACTURER.~~

17 ~~12-201.~~

18 ~~(a) A manufacturer shall complete and file with the Comptroller a tobacco~~
19 ~~tax return:~~

20 ~~(1) on or before the 15th day of the month that follows the month in~~
21 ~~which the manufacturer distributes in the State free sample cigarettes OR LITTLE~~
22 ~~CIGARS of the manufacturer; and~~

23 ~~(2) if the Comptroller so specifies, by regulation, on other dates for~~
24 ~~each month in which the manufacturer does not distribute any sample cigarettes OR~~
25 ~~LITTLE CIGARS.~~

26 ~~(b) A licensed storage warehouse operator shall file the information return~~
27 ~~that the Comptroller requires.~~

28 12-202.

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

31 (1) for cigarettes:

1 (i) on or before the 21st day of the month that follows the
 2 month in which the wholesaler has the first possession, in the State, of unstamped
 3 cigarettes for which tax stamps are required; and

4 (ii) if the Comptroller so specifies, by regulation, on other dates
 5 for each month in which the wholesaler does not have the first possession of any
 6 unstamped cigarettes in the State; and

7 (2) for other tobacco products, on the dates and for the periods that the
 8 Comptroller specifies by regulation.

9 (b) Each return shall state the quantity of cigarettes, **THE NET WEIGHT OF**
 10 **MOIST SNUFF AS LISTED BY THE MANUFACTURER**, or the wholesale price of other
 11 tobacco products **OTHER THAN MOIST SNUFF** sold during the period that the return
 12 covers.

13 ~~12-302.~~

14 (a) ~~A manufacturer of sample cigarettes OR LITTLE CIGARS shall pay the~~
 15 ~~tobacco tax on those cigarettes OR LITTLE CIGARS distributed in the State without~~
 16 ~~charge, in the manner that the Comptroller requires by regulation, with the return~~
 17 ~~that covers the period in which the manufacturer distributed those cigarettes OR~~
 18 ~~LITTLE CIGARS.~~

19 ~~Article Commercial Law~~

20 ~~SUBTITLE 5B. LITTLE CIGAR SALES OF FEWER THAN FIVE PER PACKAGE.~~

21 ~~11-5B-01.~~

22 (A) ~~IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS~~
 23 ~~INDICATED.~~

24 (B) ~~“LITTLE CIGAR” HAS THE MEANING STATED IN § 12-101(B-1) OF~~
 25 ~~THE TAX GENERAL ARTICLE.~~

26 (C) ~~“RETAILER” INCLUDES ANY PERSON ENGAGED IN THE BUSINESS OF~~
 27 ~~MAKING RETAIL SALES OF LITTLE CIGARS WITHIN THE STATE AT A STORE,~~
 28 ~~STAND, BOOTH, OR CONCESSION, THROUGH VENDING MACHINES, OR~~
 29 ~~OTHERWISE.~~

30 (D) ~~“SELL” INCLUDES ADVERTISE, OFFER TO SELL, OR OFFER FOR~~
 31 ~~SALE.~~

32 (E) ~~“VENDING MACHINE OPERATOR” MEANS A PERSON THAT:~~

1 ~~(1) MAKES RETAIL SALES OF LITTLE CIGARS OR HAS LITTLE~~
2 ~~CIGARS IN ITS POSSESSION WITH THE INTENT TO SELL THEM EXCLUSIVELY AT~~
3 ~~RETAIL THROUGH THE MEDIUM OF A VENDING MACHINE OR ANY OTHER~~
4 ~~MECHANICAL DEVICE USED FOR DISPENSING LITTLE CIGARS;~~

5 ~~(2) OWNS, OPERATES, AND SERVICES VENDING MACHINES OR~~
6 ~~OTHER MECHANICAL DEVICES USED TO DISPENSE LITTLE CIGARS ON 40 OR~~
7 ~~MORE PREMISES; AND~~

8 ~~(3) SERVICES THE MACHINES OR DEVICES BY MAINTAINING AN~~
9 ~~ESTABLISHED PLACE OF BUSINESS FOR THE PURCHASE OF LITTLE CIGARS,~~
10 ~~INCLUDING WAREHOUSING FACILITIES FOR THE STORAGE AND DISTRIBUTION~~
11 ~~OF LITTLE CIGARS.~~

12 ~~(F) (1) "WHOLESALER" MEANS A PERSON THAT PURCHASES LITTLE~~
13 ~~CIGARS DIRECTLY FROM A MANUFACTURER.~~

14 ~~(2) "WHOLESALER" INCLUDES A PERSON THAT, AS A~~
15 ~~SUBWHOLESALER;~~

16 ~~(I) PURCHASES LITTLE CIGARS FROM ANOTHER~~
17 ~~WHOLESALER SOLELY FOR THE PURPOSE OF BONA FIDE RESALE TO RETAILERS~~
18 ~~OTHER THAN THOSE DIRECTLY OR INDIRECTLY OWNED, AFFILIATED, OR~~
19 ~~CONTROLLED BY THE SUBWHOLESALER; AND~~

20 ~~(II) SERVICES THE RETAILERS BY MAINTAINING AN~~
21 ~~ESTABLISHED PLACE OF BUSINESS FOR THE SALE OF LITTLE CIGARS,~~
22 ~~INCLUDING WAREHOUSE FACILITIES, ADEQUATE INVENTORY, PROPER~~
23 ~~ACCOUNTING RECORDS, AND NECESSARY EQUIPMENT AND VEHICLES FOR THE~~
24 ~~STORAGE AND DISTRIBUTION OF LITTLE CIGARS.~~

25 ~~(3) IF THE PERSON IS ENGAGED IN THE BUSINESS OF MAKING~~
26 ~~BOTH WHOLESALE SALES OF LITTLE CIGARS AND RETAIL SALES OF LITTLE~~
27 ~~CIGARS, "WHOLESALER" APPLIES ONLY TO THE WHOLESALE SALES OF LITTLE~~
28 ~~CIGARS PORTION OF THE BUSINESS.~~

29 ~~11-5B-02.~~

30 ~~(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A RETAILER~~
31 ~~OR VENDING MACHINE OPERATOR MAY NOT PURCHASE FROM A TOBACCO~~
32 ~~PRODUCT MANUFACTURER OR SELL, RESELL, DISTRIBUTE, DISPENSE, OR GIVE~~
33 ~~AWAY TO ANY PERSON A PACKAGE OF LITTLE CIGARS CONTAINING FEWER THAN~~
34 ~~FIVE LITTLE CIGARS.~~

1 ~~(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A~~
 2 ~~WHOLESALER MAY NOT SELL, RESELL, DISTRIBUTE, DISPENSE, OR GIVE AWAY~~
 3 ~~TO ANY PERSON IN THIS STATE A PACKAGE OF LITTLE CIGARS CONTAINING~~
 4 ~~FEWER THAN FIVE LITTLE CIGARS.~~

5 ~~11-5B-03.~~

6 ~~(A) THE COMPTROLLER SHALL ENFORCE THIS SUBTITLE.~~

7 ~~(B) THE COMPTROLLER SHALL:~~

8 ~~(1) EMPLOY AND DETERMINE THE DUTIES AND COMPENSATION~~
 9 ~~OF THE INSPECTORS AND OTHER PERSONNEL NECESSARY TO ENFORCE THIS~~
 10 ~~SUBTITLE; AND~~

11 ~~(2) ADOPT REGULATIONS NECESSARY TO EFFECTUATE AND~~
 12 ~~ENFORCE THE PROVISIONS OF THIS SUBTITLE.~~

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 14 July 1, 2008.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.