

# SENATE BILL 1071

Q4

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By: **Senator Madaleno**

Constitutional Requirements Complied with for Introduction in the last 35 Days of Session

Introduced and read first time: March 28, 2009

Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Sales and Use Tax – Online Sales Presumption**

3 FOR the purpose of providing that for purposes of certain provisions of the sales and  
4 use tax law certain persons shall be presumed under certain circumstances to  
5 have an agent, canvasser, representative, salesman, or solicitor operating in the  
6 State for certain purposes; providing that a certain presumption may be  
7 rebutted by certain proof; providing for the construction of certain provisions of  
8 this Act; and generally relating to a presumption under the sales and use tax  
9 law under certain circumstances that certain persons have an agent, canvasser,  
10 representative, salesman, or solicitor operating in the State for certain  
11 purposes.

12 BY repealing and reenacting, without amendments,  
13 Article – Tax – General  
14 Section 11–701(b)  
15 Annotated Code of Maryland  
16 (2004 Replacement Volume and 2008 Supplement)

17 BY adding to  
18 Article – Tax – General  
19 Section 11–701.1  
20 Annotated Code of Maryland  
21 (2004 Replacement Volume and 2008 Supplement)

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

24 **Article – Tax – General**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 11-701.

2 (b) (1) "Engage in the business of an out-of-state vendor" means to sell or  
3 deliver tangible personal property or a taxable service for use in the State.

4 (2) "Engage in the business of an out-of-state vendor" includes:

5 (i) permanently or temporarily maintaining, occupying, or  
6 using any office, sales or sample room, or distribution, storage, warehouse, or other  
7 place for the sale of tangible personal property or a taxable service directly or  
8 indirectly through an agent or subsidiary;

9 (ii) having an agent, canvasser, representative, salesman, or  
10 solicitor operating in the State for the purpose of delivering, selling, or taking orders  
11 for tangible personal property or a taxable service; or

12 (iii) entering the State on a regular basis to provide service or  
13 repair for tangible personal property.

14 **11-701.1.**

15 (A) **IN THIS SECTION, "SELLER" MEANS A PERSON MAKING SALES OF**  
16 **TANGIBLE PERSONAL PROPERTY OR A TAXABLE SERVICE.**

17 (B) **FOR PURPOSES OF § 11-701(B)(2)(II) OF THIS SUBTITLE, A SELLER**  
18 **SHALL BE PRESUMED TO HAVE AN AGENT, CANVASSER, REPRESENTATIVE,**  
19 **SALESMAN, OR SOLICITOR OPERATING IN THE STATE FOR THE PURPOSE OF**  
20 **SELLING OR TAKING ORDERS FOR TANGIBLE PERSONAL PROPERTY OR A**  
21 **TAXABLE SERVICE IF:**

22 (1) **THE SELLER ENTERS INTO AN AGREEMENT WITH A RESIDENT**  
23 **OF THE STATE UNDER WHICH THE RESIDENT, FOR A COMMISSION OR OTHER**  
24 **CONSIDERATION, DIRECTLY OR INDIRECTLY REFERS POTENTIAL CUSTOMERS**  
25 **TO THE SELLER, WHETHER BY A LINK ON AN INTERNET WEBSITE OR**  
26 **OTHERWISE; AND**

27 (2) **THE CUMULATIVE GROSS RECEIPTS FROM SALES BY THE**  
28 **SELLER TO CUSTOMERS IN THE STATE WHO ARE REFERRED TO THE SELLER BY**  
29 **ALL RESIDENTS HAVING AN AGREEMENT WITH THE SELLER AS DESCRIBED IN**  
30 **ITEM (1) OF THIS SUBSECTION IS GREATER THAN \$10,000 DURING THE**  
31 **PRECEDING FOUR QUARTERLY PERIODS ENDING ON THE LAST DAY OF**  
32 **FEBRUARY, MAY, AUGUST, AND NOVEMBER.**

33 (C) **THE PRESUMPTION UNDER THIS SECTION MAY BE REBUTTED BY**  
34 **PROOF THAT THE RESIDENT WITH WHOM THE SELLER HAS AN AGREEMENT AS**

1 DESCRIBED IN SUBSECTION (B)(1) OF THIS SECTION DID NOT ENGAGE IN ANY  
2 SOLICITATION IN THE STATE ON BEHALF OF THE SELLER THAT WOULD SATISFY  
3 THE NEXUS REQUIREMENT OF THE UNITED STATES CONSTITUTION DURING  
4 THE FOUR QUARTERLY PERIODS IN QUESTION.

5 (D) THIS SECTION MAY NOT BE CONSTRUED TO NARROW THE SCOPE OF  
6 THE TERMS “AGENT”, “CANVASSER”, “REPRESENTATIVE”, “SALESMAN”, AND  
7 “SOLICITOR” FOR PURPOSES OF § 11-701(B)(2)(II) OF THIS SUBTITLE OR FOR  
8 PURPOSES OF ANY OTHER PROVISION OF LAW.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
10 June 1, 2009.