

## **CHAPTER 688**

**(House Bill 653)**

AN ACT concerning

### **Fire Safety Performance Standard for Cigarettes – Sale or Distribution for Consumer Testing Under Controlled Settings**

FOR the purpose of providing that cigarettes sold or distributed for the purpose of consumer testing in a controlled setting are not subject to certain certification requirements as to having met a certain fire safety performance standard; providing that cigarette manufacturers may submit to the Comptroller, as confidential under seal, certain information about cigarettes that are required to be certified as having met a certain fire safety performance standard; providing that certain information submitted to the Comptroller under this Act as confidential under seal is not subject to certain disclosures and may be used for certain purposes; defining certain terms; providing for the termination of this Act; and generally relating to consumer testing of cigarettes for fire safety performance purposes.

BY repealing and reenacting, with amendments,  
Article – Business Regulation  
Section 16–601 and 16–602(a)  
Annotated Code of Maryland  
(2004 Replacement Volume and 2008 Supplement)

BY adding to  
Article – Business Regulation  
Section 16–602.1  
Annotated Code of Maryland  
(2004 Replacement Volume and 2008 Supplement)

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

#### **Article – Business Regulation**

16–601.

- (a) In this subtitle the following words have the meanings indicated.
- (b) “Cigarette” has the meaning stated in § 16–101 of this title.
- (c) “Commission” means the State Fire Prevention Commission.

**(D) “CONSUMER TESTING” MEANS AN ASSESSMENT OF CIGARETTES THAT IS CONDUCTED BY A MANUFACTURER OR CONDUCTED UNDER THE CONTROL AND DIRECTION OF A MANUFACTURER FOR THE PURPOSE OF EVALUATING CONSUMER ACCEPTANCE OF THE CIGARETTES BY USING ONLY THE QUANTITY OF CIGARETTES THAT IS REASONABLY NECESSARY FOR THE ASSESSMENT.**

**[(d)] (E) “Manufacturer” means:**

(1) a person that manufactures or otherwise produces, or causes to be manufactured or produced, cigarettes intended for sale in this State, including cigarettes intended for sale in the United States through an importer;

(2) the first purchaser anywhere that intends to resell in the United States cigarettes that the original manufacturer or maker does not intend for sale in the United States; or

(3) a person that is a successor of a person listed in item (1) or (2) of this subsection.

**[(e)] (F) “Quality control and quality assurance program” means laboratory procedures implemented to ensure that:**

(1) operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing; and

(2) the testing repeatability remains within the required repeatability value for any test trial used to certify cigarettes under this subtitle.

**[(f)] (G) “Repeatability” means the range of values within which the repeat results of cigarette test trials from a single laboratory fall 95% of the time.**

**[(g)] (H) “Retailer” has the meaning stated in § 16-201 of this title.**

**(I) (1) “SALE” MEANS THE EXCHANGE OR TRANSFER, OR THE AGREEMENT TO EXCHANGE OR TRANSFER, TITLE OR POSSESSION OF PROPERTY IN ANY MANNER OR BY ANY MEANS FOR CONSIDERATION.**

**(2) “SALE” INCLUDES:**

**(I) THE GIVING OR DISTRIBUTION OF CIGARETTES AS SAMPLES, PRIZES, GIFTS, OR IN CONNECTION WITH CONSUMER TESTING; AND**

**(II) THE EXCHANGE OF CIGARETTES FOR ANY CONSIDERATION OTHER THAN MONEY.**

**[(h)] (J)** “Subwholesaler” has the meaning stated in § 16–201 of this title.

**[(i)] (K)** “Vending machine operator” has the meaning stated in § 16–201 of this title.

**[(j)] (L)** “Wholesaler” has the meaning stated in § 16–201 of this title.

16–602.

(a) **[Cigarettes] EXCEPT AS PROVIDED IN § 16–602.1 OF THIS SUBTITLE, CIGARETTES** may not be manufactured in this State or sold or offered for sale to any person in this State unless:

(1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section; and

(2) the manufacturer has filed a written certification with the Comptroller in accordance with § 16–603 of this subtitle.

**16–602.1.**

**(A) CIGARETTES THAT ARE SOLD OR DISTRIBUTED FOR THE PURPOSE OF CONSUMER TESTING IN A CONTROLLED SETTING IN WHICH THE CIGARETTES ARE EITHER SMOKED ON THE SITE OF THE TESTING OR RETURNED TO THE TESTING ADMINISTRATOR AT THE CONCLUSION OF THE TESTING ARE NOT SUBJECT TO THE CERTIFICATION REQUIREMENTS OF § 16–602 OF THIS SUBTITLE.**

**(B) (1) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, CIGARETTES THAT ARE SOLD OR DISTRIBUTED FOR THE PURPOSE OF CONSUMER TESTING IN ANY SETTING OTHER THAN A CONTROLLED SETTING AS DESCRIBED IN SUBSECTION (A) OF THIS SECTION ARE SUBJECT TO THE CERTIFICATION REQUIREMENTS OF § 16–602 OF THIS SUBTITLE.**

**(2) A MANUFACTURER CERTIFICATION UNDER THIS SUBSECTION MAY NOT BE SUBJECT TO § 16–605 OF THIS SUBTITLE.**

**(C) (1) (I) THE MANUFACTURER MAY SUBMIT TO THE COMPTROLLER, AS “CONFIDENTIAL UNDER SEAL”, DESCRIPTORS FOR EACH CIGARETTE SOLD OR DISTRIBUTED FOR THE PURPOSE OF CONSUMER TESTING UNDER SUBSECTION (B)(1) OF THIS SECTION.**

**(II) DESCRIPTORS SHALL INCLUDE BRAND, STYLE, LENGTH, CIRCUMFERENCE, FLAVOR, AND PACKAGE.**

**(2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE INFORMATION SUBMITTED IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION:**

**(I) IS NOT SUBJECT TO DISCLOSURE UNDER STATE LAW OR DISCOVERY IN CIVIL LITIGATION; AND**

**(II) MAY BE USED BY THE COMPTROLLER OR THE ATTORNEY GENERAL FOR THE PURPOSE OF ENFORCING THE PROVISIONS OF THIS TITLE.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009. It shall remain effective until the taking effect of the termination provision specified in Section 5 of Chapter 497 of the Acts of the General Assembly of 2007. If that termination provision takes effect, this Act shall be abrogated and of no further force and effect. This Act may not be interpreted to have any effect on that termination provision.

**Approved by the Governor, May 19, 2009.**