

HOUSE BILL 88

C2

0lr0071

(PRE-FILED)

By: **Chair, Economic Matters Committee and Chair, Ways and Means Committee (By Request – Departmental – Comptroller)**

Requested: October 23, 2009

Introduced and read first time: January 13, 2010

Assigned to: Economic Matters and Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 24, 2010

CHAPTER _____

1 AN ACT concerning

2 **Other Tobacco Products Licenses**

3 FOR the purpose of requiring a person to have an appropriate license whenever the
4 person acts in the State as an other tobacco products manufacturer, retailer,
5 storage warehouse, tobacconist, or wholesaler ~~in the State~~; providing for a
6 certain exception for certain retailers and wholesalers; requiring a license to act
7 as an other tobacco products retailer or a tobacconist for each place of business
8 of the retailer or the tobacconist; making holders of other tobacco products
9 licenses subject to certain restrictions and requirements; providing for license
10 application procedures and fees; requiring the display of a license in a certain
11 manner; prohibiting a person from reapplying for a license within a certain
12 period after the person's license was revoked; requiring the Comptroller to issue
13 other tobacco products licenses to manufacturers, storage warehouses, and
14 wholesalers in the State under certain circumstances; requiring certain clerks of
15 the circuit court to issue other tobacco products licenses to retailers and
16 tobacconists under certain circumstances; specifying the scope of the licenses;
17 providing certain provisions for retailers defined as tobacconists and retailers
18 that sell premium cigars and pipe tobacco; providing for the renewal of a
19 license; authorizing the Comptroller to delegate certain powers and duties;
20 providing for certain disciplinary actions and proceedings; authorizing the
21 Comptroller to adopt certain regulations; granting certain rights to judicial
22 review under certain circumstances; prohibiting a person from acting,
23 attempting to act, or offering to act in the State as an other tobacco products

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 manufacturer, retailer, storage warehouse, tobacconist, or wholesaler ~~in the~~
2 ~~State~~ unless the person has an appropriate license; requiring the Comptroller to
3 pay certain fees into the General Fund of the State; stating the intent of the
4 General Assembly; requiring certain licensees to take certain actions and keep
5 certain records; requiring a person who transports other tobacco products by
6 vehicle on a public road to have certain information; authorizing the
7 Comptroller by regulation to require a common carrier that brings other tobacco
8 products into the State to submit certain information; prohibiting a person from
9 shipping, importing, or selling other tobacco products into or within the State
10 except under certain circumstances; requiring a person who ships, imports, or
11 sells other tobacco products to take certain actions; placing certain restrictions
12 on the sale, storage, and distribution of other tobacco products; providing for
13 certain penalties; prohibiting certain political subdivisions from imposing a tax
14 on other tobacco products; requiring ~~certain~~ other tobacco products licensees
15 and certain wholesalers to file a certain tax returns return on or before a certain
16 date and pay a certain tax; ~~altering certain requirements for payment of the~~
17 ~~tobacco tax on cigarettes and other tobacco products~~; repealing a certain
18 requirement that the Comptroller establish by regulation a certain system of
19 taxing other tobacco products; authorizing the Comptroller to require an other
20 tobacco products ~~manufacturer or~~ wholesaler to post security in a certain
21 ~~amounts~~ amount; defining certain terms; altering certain definitions; requiring
22 the Comptroller to adopt certain regulations; providing for a delayed effective
23 date; and generally relating to licenses for other tobacco products
24 manufacturers, retailers, storage warehouses, tobacconists, and wholesalers in
25 the State.

26 BY repealing

27 Article – Business Regulation

28 Section 16–217

29 Annotated Code of Maryland

30 (2004 Replacement Volume and 2009 Supplement)

31 BY repealing and reenacting, with amendments,

32 Article – Business Regulation

33 Section 16–219

34 Annotated Code of Maryland

35 (2004 Replacement Volume and 2009 Supplement)

36 BY adding to

37 Article – Business Regulation

38 Section 16A–101 through 16A–218 to be under the new title “Title 16A. Other
39 Tobacco Products Licenses”

40 Annotated Code of Maryland

41 (2004 Replacement Volume and 2009 Supplement)

42 BY repealing and reenacting, with amendments,

43 Article – Tax – General

Section 12-101, 12-102, 12-103, 12-104, 12-201, 12-202, 12-301, 12-302,
~~12-304(a)~~, 13-825(h), and 13-1015
Annotated Code of Maryland
(2004 Replacement Volume and 2009 Supplement)

BY repealing
Article – Tax – General
Section 12-306
Annotated Code of Maryland
(2004 Replacement Volume and 2009 Supplement)

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

Article – Business Regulation

[16-217.

The Comptroller by regulation may require a common carrier that brings
cigarettes into the State to submit to the Comptroller a copy of any freight bill relating
to the cigarette shipment.]

16-219.

(a) [In this section, “other tobacco products” has the meaning stated in §
12-101 of the Tax – General Article.

(b)] A person who transports cigarettes [or other tobacco products] by vehicle
on a public road shall have in the vehicle a delivery ticket or invoice that states:

(1) the name and address of the seller or consignor;

(2) the name and address of a buyer or consignee who is:

(i) a person in the State authorized by Title 12 of the
Tax – General Article to hold unstamped cigarettes [or other tobacco products] on
which the tobacco tax has not been paid; or

(ii) a person in another jurisdiction authorized to hold cigarettes
[or other tobacco products] on which the tax imposed by that jurisdiction has not been
paid; and

(3) the quantity and brands of the cigarettes [or other tobacco
products] that are being transported.

**(B) THE COMPTROLLER BY REGULATION MAY REQUIRE A COMMON
CARRIER THAT BRINGS CIGARETTES INTO THE STATE TO SUBMIT TO THE**

1 COMPTROLLER A COPY OF ANY FREIGHT BILL RELATING TO THE CIGARETTE
2 SHIPMENT.

3 TITLE 16A. OTHER TOBACCO PRODUCTS LICENSES.

4 SUBTITLE 1. DEFINITIONS.

5 16A-101.

6 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
7 INDICATED.

8 (B) "COUNTY LICENSE" MEANS A LICENSE ISSUED BY THE CLERK TO
9 SELL OTHER TOBACCO PRODUCTS AT RETAIL IN A COUNTY.

10 (C) "LICENSE" MEANS:

11 (1) A LICENSE ISSUED BY THE COMPTROLLER UNDER §
12 16A-204(A) OF THIS TITLE TO:

13 (I) ACT AS ~~AN~~ A LICENSED OTHER TOBACCO PRODUCTS
14 MANUFACTURER;

15 (II) ACT AS AN OTHER TOBACCO PRODUCTS WHOLESALER;

16 (III) ACT AS AN OTHER TOBACCO PRODUCTS STORAGE
17 WAREHOUSE; OR

18 (2) A LICENSE ISSUED BY THE CLERK UNDER § 16A-204(B) OF
19 THIS TITLE TO ACT AS AN OTHER TOBACCO PRODUCTS RETAILER OR A
20 TOBACCONIST.

21 (D) "LICENSED OTHER TOBACCO PRODUCTS MANUFACTURER" MEANS A
22 PERSON LICENSED BY THE COMPTROLLER UNDER § 16A-204(A) OF THIS TITLE
23 ~~TO ACT AS AN OTHER TOBACCO PRODUCTS MANUFACTURER WHO:~~

24 (1) MANUFACTURES OR OTHERWISE PRODUCES OTHER TOBACCO
25 PRODUCTS IN THE STATE INTENDED FOR SALE IN THE STATE, INCLUDING
26 OTHER TOBACCO PRODUCTS INTENDED FOR SALE IN THE STATE THROUGH AN
27 IMPORTER; AND

28 (2) (I) SELLS OTHER TOBACCO PRODUCTS ON WHICH THE
29 TOBACCO TAX HAS NOT BEEN PAID TO A LICENSED OTHER TOBACCO PRODUCTS
30 WHOLESALER IN THE STATE;

1 **(II) SELLS OTHER TOBACCO PRODUCTS ON WHICH THE**
2 **TOBACCO TAX HAS NOT BEEN PAID AND WHICH MAY LAWFULLY BE SOLD IN THE**
3 **STATE TO A LICENSED OTHER TOBACCO PRODUCTS WHOLESALER LOCATED**
4 **OUTSIDE OF THE STATE;**

5 **(III) UNLESS OTHERWISE PROHIBITED OR RESTRICTED**
6 **UNDER LOCAL LAW, THIS ARTICLE, OR THE CRIMINAL LAW ARTICLE,**
7 **DISTRIBUTES SAMPLE OTHER TOBACCO PRODUCTS TO CONSUMERS LOCATED IN**
8 **THE STATE; OR**

9 **(IV) STORES OTHER TOBACCO PRODUCTS IN AN OTHER**
10 **TOBACCO PRODUCTS WAREHOUSE IN THE STATE FOR SUBSEQUENT SHIPMENT**
11 **TO LICENSED WHOLESALERS, FEDERAL RESERVATIONS, OR PERSONS OUTSIDE**
12 **OF THE STATE.**

13 **(E) “LICENSED OTHER TOBACCO PRODUCTS RETAILER” MEANS A**
14 **PERSON LICENSED BY THE CLERK UNDER § 16A-204(B) OF THIS TITLE TO ACT**
15 **AS AN OTHER TOBACCO PRODUCTS RETAILER.**

16 **(F) “LICENSED OTHER TOBACCO PRODUCTS STORAGE WAREHOUSE”**
17 **MEANS A FACILITY LICENSED BY THE COMPTROLLER UNDER § 16A-204(A) OF**
18 **THIS TITLE TO ACT AS AN OTHER TOBACCO PRODUCTS STORAGE WAREHOUSE.**

19 **(G) “LICENSED OTHER TOBACCO PRODUCTS WHOLESALER” MEANS A**
20 **PERSON LICENSED BY THE COMPTROLLER UNDER § 16A-204(A) OF THIS TITLE**
21 **TO ACT AS AN OTHER TOBACCO PRODUCTS WHOLESALER.**

22 **(H) “LICENSED TOBACCONIST” MEANS A PERSON LICENSED BY THE**
23 **CLERK OF A CIRCUIT COURT UNDER § 16A-204(B) OF THIS TITLE TO ACT AS A**
24 **TOBACCONIST.**

25 **(I) “OTHER TOBACCO PRODUCTS” MEANS:**

26 **(1) ANY CIGAR OR ROLL FOR SMOKING, OTHER THAN A**
27 **CIGARETTE, MADE IN WHOLE OR IN PART OF TOBACCO; OR**

28 **(2) ANY OTHER TOBACCO OR PRODUCT MADE PRIMARILY FROM**
29 **TOBACCO, OTHER THAN A CIGARETTE, THAT IS INTENDED FOR CONSUMPTION**
30 **BY SMOKING OR CHEWING OR AS SNUFF.**

31 ~~**(H)**~~ **(J) “OTHER TOBACCO PRODUCTS MANUFACTURER” MEANS A PERSON**
32 **WHO:**

33 **(1) MANUFACTURES OR OTHERWISE PRODUCES OTHER TOBACCO**
34 **PRODUCTS INTENDED FOR SALE IN THIS STATE, INCLUDING OTHER TOBACCO**

1 PRODUCTS INTENDED FOR SALE IN THE UNITED STATES THROUGH AN
2 IMPORTER; ~~AND~~

3 (2) (I) SELLS OTHER TOBACCO PRODUCTS ON WHICH THE
4 TOBACCO TAX HAS NOT BEEN PAID TO A LICENSED OTHER TOBACCO PRODUCTS
5 WHOLESALE IN MARYLAND;

6 (II) SELLS OTHER TOBACCO PRODUCTS ON WHICH THE
7 TOBACCO TAX HAS NOT BEEN PAID AND WHICH MAY LAWFULLY BE SOLD IN
8 MARYLAND TO A LICENSED OTHER TOBACCO PRODUCTS WHOLESALE
9 LOCATED OUTSIDE MARYLAND;

10 (III) UNLESS OTHERWISE PROHIBITED OR RESTRICTED
11 UNDER LOCAL LAW, THIS ARTICLE, OR THE CRIMINAL LAW ARTICLE,
12 DISTRIBUTES SAMPLE OTHER TOBACCO PRODUCTS TO CONSUMERS LOCATED IN
13 MARYLAND; OR

14 (IV) STORES OTHER TOBACCO PRODUCTS IN AN OTHER
15 TOBACCO PRODUCTS STORAGE WAREHOUSE IN MARYLAND FOR SUBSEQUENT
16 SHIPMENT TO LICENSED OTHER TOBACCO PRODUCTS WHOLESALE, FEDERAL
17 RESERVATIONS, OR PERSONS OUT OF STATE; OR

18 (3) IS A LICENSED OTHER TOBACCO PRODUCTS MANUFACTURER
19 UNDER THIS TITLE.

20 ~~(J)~~ (K) "OTHER TOBACCO PRODUCTS RETAILER" MEANS A PERSON
21 WHO:

22 (1) SELLS OTHER TOBACCO PRODUCTS TO CONSUMERS; OR

23 (2) HOLDS OTHER TOBACCO PRODUCTS FOR SALE TO
24 CONSUMERS.

25 ~~(K)~~ (L) "OTHER TOBACCO PRODUCTS STORAGE WAREHOUSE" MEANS
26 A STORAGE FACILITY IN MARYLAND OPERATED FOR THE PURPOSE OF STORING
27 OTHER TOBACCO PRODUCTS ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID
28 ON BEHALF OF ~~A LICENSED AN~~ OTHER TOBACCO PRODUCTS MANUFACTURER.

29 ~~(L)~~ (M) "OTHER TOBACCO PRODUCTS WHOLESALE" MEANS A
30 PERSON WHO:

31 (1) HOLDS OTHER TOBACCO PRODUCTS FOR SALE TO ANOTHER
32 PERSON FOR RESALE; OR

(2) SELLS OTHER TOBACCO PRODUCTS TO ANOTHER PERSON FOR RESALE.

~~(M)~~ (N) (1) "PACKAGE" MEANS A PACK, BOX, CARTON, CAN, WRAP, POUCH, BAG, OR CONTAINER OF ANY KIND DESIGNED FOR RETAIL CONSUMPTION IN WHICH OTHER TOBACCO PRODUCTS ARE OFFERED FOR SALE, SOLD, OR OTHERWISE DISTRIBUTED.

(2) "PACKAGE" INCLUDES NOT MORE THAN 10 CIGARS OFFERED FOR SALE, SOLD, OR DISTRIBUTED AS SINGLE CIGARS.

(O) "PIPE TOBACCO" MEANS ANY TOBACCO THAT, BECAUSE OF ITS APPEARANCE, TYPE, PACKAGING, OR LABELING, IS SUITABLE FOR USE AND LIKELY TO BE OFFERED TO, OR PURCHASED BY, CONSUMERS AS TOBACCO TO SMOKE IN A PIPE.

(P) "PREMIUM CIGARS" MEANS CIGARS THAT:

(1) HAVE HAND-ROLLED WRAPPERS MADE FROM WHOLE TOBACCO LEAVES WHERE THE FILLER, BINDER, AND WRAPPER ARE MADE OF ALL TOBACCO, AND MAY INCLUDE ADHESIVES OR OTHER MATERIALS USED TO MAINTAIN SIZE, TEXTURE, OR FLAVOR; OR

(2) ARE DESIGNATED AS PREMIUM CIGARS BY THE COMPTROLLER BY REGULATION.

~~(N)~~ (Q) "SELL" MEANS TO EXCHANGE OR TRANSFER, OR TO AGREE TO EXCHANGE OR TRANSFER, TITLE OR POSSESSION OF PROPERTY, IN ANY MANNER OR BY ANY MEANS, FOR CONSIDERATION.

~~(O)~~ (R) "SELL OTHER TOBACCO PRODUCTS AT RETAIL" MEANS TO SELL OTHER TOBACCO PRODUCTS TO A CONSUMER.

(S) "TOBACCONIST" MEANS AN OTHER TOBACCO PRODUCTS BUSINESS THAT DERIVES AT LEAST 70% OF ITS REVENUES, MEASURED BY AVERAGE DAILY RECEIPTS, FROM THE SALE OF OTHER TOBACCO PRODUCTS AND TOBACCO-RELATED ACCESSORIES.

16A-102.

THE COMPTROLLER MAY DELEGATE ANY POWER OR DUTY OF THE COMPTROLLER UNDER THIS TITLE.

SUBTITLE 2. OTHER TOBACCO PRODUCTS LICENSES.

16A-201.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERSON MUST HAVE AN APPROPRIATE LICENSE WHENEVER THE PERSON ACTS AS ~~AN~~ A LICENSED OTHER TOBACCO PRODUCTS MANUFACTURER, A LICENSED OTHER TOBACCO PRODUCTS RETAILER, A LICENSED OTHER TOBACCO PRODUCTS STORAGE WAREHOUSE, ~~OR A LICENSED~~ OTHER TOBACCO PRODUCTS WHOLESALE, OR A LICENSED TOBACCONIST IN THE STATE.

(B) A PERSON NEED NOT OBTAIN AN OTHER TOBACCO PRODUCTS RETAILER LICENSE UNDER THIS SUBTITLE TO ACT AS A RETAILER AT A VENDING STAND OPERATED UNDER A TRADER'S LICENSE ISSUED TO BLIND INDUSTRIES AND SERVICES OF MARYLAND.

(C) A LICENSE TO ACT AS AN OTHER TOBACCO PRODUCTS RETAILER OR A TOBACCONIST IS REQUIRED FOR EACH PLACE OF BUSINESS WHERE A PERSON ACTS AS AN OTHER TOBACCO PRODUCTS RETAILER OR A TOBACCONIST.

(D) (1) ~~A PERSON LICENSED AS AN~~ AN OTHER TOBACCO PRODUCTS MANUFACTURER, OR PERSON CONNECTED WITH THE BUSINESS OF ~~A LICENSED~~ AN OTHER TOBACCO PRODUCTS MANUFACTURER OR RELATED BY OWNERSHIP, MAY NOT AT THE SAME TIME HOLD OR HAVE ANY FINANCIAL INTEREST IN AN OTHER TOBACCO PRODUCTS WHOLESALE LICENSE OR IN ANY BUSINESS OF AN OTHER TOBACCO PRODUCTS WHOLESALE.

(2) A PERSON LICENSED AS AN OTHER TOBACCO PRODUCTS WHOLESALE, OR PERSON CONNECTED WITH THE BUSINESS OF A LICENSED OTHER TOBACCO PRODUCTS WHOLESALE OR RELATED BY OWNERSHIP, MAY NOT AT THE SAME TIME HOLD OR HAVE ANY FINANCIAL INTEREST IN AN OTHER TOBACCO PRODUCTS MANUFACTURER LICENSE OR IN ANY BUSINESS OF AN OTHER TOBACCO PRODUCTS MANUFACTURER.

16A-202.

(A) AN APPLICANT FOR A LICENSE TO ACT AS ~~AN~~ A LICENSED OTHER TOBACCO PRODUCTS MANUFACTURER SHALL MAINTAIN IN THE STATE AN ESTABLISHED PLACE OF BUSINESS FOR THE MANUFACTURE AND STORAGE OF OTHER TOBACCO PRODUCTS.

(B) AN APPLICANT FOR A LICENSE TO ACT AS AN OTHER TOBACCO PRODUCTS STORAGE WAREHOUSE SHALL MAINTAIN AN ESTABLISHED PLACE OF BUSINESS FOR STORAGE OF OTHER TOBACCO PRODUCTS ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID.

1 (C) AN APPLICANT FOR A LICENSE TO ACT AS AN OTHER TOBACCO
2 PRODUCTS WHOLESALE SHALL MAINTAIN:

3 (1) AN ESTABLISHED PLACE OF BUSINESS, INCLUDING
4 WAREHOUSE FACILITIES, FOR THE SALE OF OTHER TOBACCO PRODUCTS; AND

5 (2) NECESSARY EQUIPMENT AND VEHICLES FOR THE STORAGE
6 AND DISTRIBUTION OF OTHER TOBACCO PRODUCTS.

7 16A-203.

8 (A) AN APPLICANT FOR A LICENSE TO ACT AS ~~AN~~ A LICENSED OTHER
9 TOBACCO PRODUCTS MANUFACTURER SHALL:

10 (1) SUBMIT AN APPLICATION TO THE COMPTROLLER ON THE
11 FORM AND CONTAINING THE INFORMATION THAT THE COMPTROLLER
12 REQUIRES; AND

13 (2) PAY TO THE COMPTROLLER A FEE OF \$25.

14 (B) (1) AN APPLICANT FOR A LICENSE TO ACT AS AN OTHER TOBACCO
15 PRODUCTS RETAILER OR A TOBACCONIST:

16 (I) SHALL OBTAIN A COUNTY LICENSE BY SUBMITTING TO
17 THE CLERK AN APPLICATION FOR EACH PERMANENT OR TEMPORARY PLACE OF
18 BUSINESS LOCATED IN THE SAME ENCLOSURE AND OPERATED BY THE SAME
19 APPLICANT; AND

20 (II) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
21 SUBSECTION, SHALL PAY TO THE CLERK A FEE OF \$15.

22 (2) A PERSON WHO HAS A LICENSE ISSUED UNDER TITLE 16 OF
23 THIS ARTICLE TO ACT AS A CIGARETTE RETAILER OR TO ACT AS A SPECIAL
24 CIGARETTE RETAILER IS NOT REQUIRED TO PAY THE LICENSE FEE.

25 (3) THE APPLICATION SHALL:

26 (I) BE MADE ON THE FORM THAT THE CLERK REQUIRES;
27 AND

28 (II) CONTAIN THE INFORMATION THAT THE COMPTROLLER
29 REQUIRES.

30 (C) AN APPLICANT FOR A LICENSE TO ACT AS AN OTHER TOBACCO
31 PRODUCTS STORAGE WAREHOUSE SHALL:

(1) SUBMIT AN APPLICATION TO THE COMPTROLLER ON THE FORM AND CONTAINING THE INFORMATION THAT THE COMPTROLLER REQUIRES; AND

(2) PAY TO THE COMPTROLLER A FEE OF \$25.

(D) (1) AN APPLICANT FOR A LICENSE TO ACT AS AN OTHER TOBACCO PRODUCTS WHOLESALER SHALL:

~~(1)~~ (I) SUBMIT AN APPLICATION TO THE COMPTROLLER ON THE FORM AND CONTAINING THE INFORMATION THAT THE COMPTROLLER REQUIRES; AND

~~(2)~~ (II) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, PAY TO THE COMPTROLLER A FEE OF \$250.

(2) A PERSON WHO HAS A LICENSE ISSUED UNDER TITLE 16 OF THIS ARTICLE TO ACT AS A CIGARETTE WHOLESALER IS NOT REQUIRED TO PAY THE LICENSE FEE.

(E) A LICENSEE SHALL DISPLAY A LICENSE IN THE WAY THAT THE COMPTROLLER REQUIRES BY REGULATION.

(F) IF A PERSON HAS HAD A LICENSE REVOKED UNDER § 16A-208 OF THIS SUBTITLE, THE PERSON MAY NOT REAPPLY FOR A LICENSE WITHIN 1 YEAR AFTER THE DATE WHEN THE PRIOR LICENSE WAS REVOKED.

16A-204.

(A) THE COMPTROLLER SHALL ISSUE AN APPROPRIATE LICENSE TO EACH APPLICANT WHO MEETS THE REQUIREMENTS OF THIS SUBTITLE FOR A LICENSE TO ACT AS ~~AN~~ A LICENSED OTHER TOBACCO PRODUCTS MANUFACTURER, OTHER TOBACCO PRODUCTS STORAGE WAREHOUSE, OR OTHER TOBACCO PRODUCTS WHOLESALER.

(B) THE CLERK OF THE CIRCUIT COURT SHALL ISSUE TO EACH APPLICANT WHO MEETS THE REQUIREMENTS OF THIS SUBTITLE A LICENSE TO ACT AS AN OTHER TOBACCO PRODUCTS RETAILER OR A TOBACCONIST.

16A-205.

(A) AN OTHER TOBACCO PRODUCTS MANUFACTURER ~~LICENSE~~ AUTHORIZES THE LICENSEE TO MAY:

(1) SELL OTHER TOBACCO PRODUCTS ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID TO:

(I) A LICENSED OTHER TOBACCO PRODUCTS WHOLESALER LOCATED IN MARYLAND;

(II) A LICENSED OTHER TOBACCO PRODUCTS WHOLESALER LOCATED OUTSIDE MARYLAND IF THE OTHER TOBACCO PRODUCTS MAY BE SOLD LAWFULLY IN MARYLAND; OR

(III) A LICENSED TOBACCONIST;

(2) SELL PREMIUM CIGARS OR PIPE TOBACCO ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID TO A LICENSED OTHER TOBACCO PRODUCTS RETAILER;

~~(2)~~ (3) EXCEPT AS OTHERWISE PROHIBITED OR RESTRICTED UNDER LOCAL LAW, THIS ARTICLE, OR THE CRIMINAL LAW ARTICLE, DISTRIBUTE SAMPLE OTHER TOBACCO PRODUCTS TO CONSUMERS LOCATED IN MARYLAND; ~~AND~~

~~(3)~~ (4) STORE OTHER TOBACCO PRODUCTS ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID IN A LICENSED OTHER TOBACCO PRODUCTS STORAGE WAREHOUSE FOR SUBSEQUENT SHIPMENT TO LICENSED OTHER TOBACCO PRODUCTS WHOLESALERS, FEDERAL RESERVATIONS, OR PERSONS OUT OF STATE; AND

(5) ON APPROVAL OF THE COMPTROLLER, ACT AS AN AGENT OF A MARYLAND OTHER TOBACCO PRODUCTS WHOLESALER FOR DISTRIBUTION OF OTHER TOBACCO PRODUCTS.

(B) AN OTHER TOBACCO PRODUCTS RETAILER LICENSE AUTHORIZES THE LICENSEE TO:

(1) ACT AS AN OTHER TOBACCO PRODUCTS RETAILER; ~~AND~~

(2) BUY OTHER TOBACCO PRODUCTS ON WHICH THE TOBACCO TAX HAS BEEN PAID FROM AN OTHER TOBACCO PRODUCTS WHOLESALER; AND

(3) BUY PREMIUM CIGARS OR PIPE TOBACCO ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID FROM AN OTHER TOBACCO PRODUCTS MANUFACTURER.

(C) (1) AN OTHER TOBACCO PRODUCTS STORAGE WAREHOUSE LICENSE AUTHORIZES THE LICENSEE TO OPERATE A STORAGE FACILITY IN

1 MARYLAND FOR THE PURPOSE OF STORING OTHER TOBACCO PRODUCTS ON
2 WHICH THE TOBACCO TAX HAS NOT BEEN PAID ON BEHALF OF A LICENSED
3 OTHER TOBACCO PRODUCTS MANUFACTURER.

4 (2) IF AN OTHER TOBACCO PRODUCTS STORAGE WAREHOUSE
5 LICENSEE IS A LICENSED OTHER TOBACCO PRODUCTS WHOLESALER, THE
6 OTHER TOBACCO PRODUCTS STORAGE WAREHOUSE LICENSE AUTHORIZES THE
7 HOLDER TO STORE OTHER TOBACCO PRODUCTS ON WHICH THE TOBACCO TAX
8 HAS BEEN PAID AND OTHER TOBACCO PRODUCTS ON WHICH THE TOBACCO TAX
9 HAS BEEN PAID TO ANOTHER STATE.

10 (D) AN OTHER TOBACCO PRODUCTS WHOLESALER LICENSE
11 AUTHORIZES THE LICENSEE TO:

12 (1) ACT AS AN OTHER TOBACCO PRODUCTS WHOLESALER;

13 (2) BUY OTHER TOBACCO PRODUCTS ON WHICH THE TOBACCO
14 TAX HAS NOT BEEN PAID DIRECTLY FROM AN OTHER TOBACCO PRODUCTS
15 MANUFACTURER;

16 (3) HOLD OTHER TOBACCO PRODUCTS ON WHICH THE TOBACCO
17 TAX HAS NOT BEEN PAID;

18 (4) TRANSPORT OTHER TOBACCO PRODUCTS ON WHICH THE
19 TOBACCO TAX HAS NOT BEEN PAID IN THE STATE;

20 (5) SELL OTHER TOBACCO PRODUCTS ON WHICH THE TOBACCO
21 TAX HAS NOT BEEN PAID TO ANOTHER LICENSED OTHER TOBACCO PRODUCTS
22 WHOLESALER IF THE COMPTROLLER SPECIFICALLY AUTHORIZES; AND

23 (6) STORE OTHER TOBACCO PRODUCTS ON WHICH THE TOBACCO
24 TAX HAS NOT BEEN PAID AT A LICENSED OTHER TOBACCO PRODUCTS STORAGE
25 WAREHOUSE.

26 (E) A TOBACCONIST LICENSE AUTHORIZES THE LICENSEE TO:

27 (1) ACT AS A TOBACCONIST; AND

28 (2) BUY OTHER TOBACCO PRODUCTS ON WHICH THE TOBACCO
29 TAX HAS NOT BEEN PAID FROM AN OTHER TOBACCO PRODUCTS
30 MANUFACTURER.

31 16A-206.

1 (A) UNLESS A LICENSE IS RENEWED FOR A 1-YEAR TERM AS PROVIDED
2 IN THIS SECTION, THE LICENSE EXPIRES ON THE FIRST APRIL 30 AFTER ITS
3 EFFECTIVE DATE.

4 (B) AT LEAST 1 MONTH BEFORE A LICENSE ISSUED UNDER THIS
5 SUBTITLE EXPIRES, THE ISSUING OFFICIAL SHALL MAIL TO THE LICENSEE, AT
6 THE LAST KNOWN ADDRESS OF THE LICENSEE, A RENEWAL NOTICE THAT
7 STATES:

8 (1) THE DATE ON WHICH THE CURRENT LICENSE EXPIRES; AND

9 (2) THE DATE BY WHICH THE ISSUING OFFICIAL MUST RECEIVE
10 THE RENEWAL APPLICATION FOR THE RENEWAL TO BE ISSUED AND MAILED
11 BEFORE THE LICENSE EXPIRES.

12 (C) BEFORE A LICENSE ISSUED UNDER THIS SUBTITLE EXPIRES, THE
13 LICENSEE MAY RENEW IT FOR AN ADDITIONAL 1-YEAR TERM, IF THE LICENSEE:

14 (1) OTHERWISE IS ENTITLED TO BE LICENSED;

15 (2) SUBMITS TO THE ISSUING OFFICIAL A RENEWAL APPLICATION
16 ON THE FORM THAT THE ISSUING OFFICIAL REQUIRES; AND

17 (3) PAYS TO THE ISSUING OFFICIAL THE LICENSE FEE REQUIRED
18 UNDER § 16A-203 OF THIS SUBTITLE.

19 (D) THE ISSUING OFFICIAL SHALL RENEW THE LICENSE OF EACH
20 LICENSEE WHO MEETS THE REQUIREMENTS OF THIS SECTION.

21 16A-207.

22 (A) (1) A LICENSED OTHER TOBACCO PRODUCTS RETAILER OR A
23 LICENSED TOBACCONIST MAY NOT ASSIGN THE LICENSE.

24 (2) IF A LICENSED OTHER TOBACCO PRODUCTS WHOLESALER
25 SELLS THE LICENSEE'S OTHER TOBACCO PRODUCTS BUSINESS AND PAYS TO
26 THE COMPTROLLER A LICENSE ASSIGNMENT FEE OF \$10, THE LICENSEE MAY
27 ASSIGN THE LICENSE TO THE BUYER OF THE BUSINESS, IF THE BUYER
28 OTHERWISE QUALIFIES UNDER THIS TITLE FOR AN OTHER TOBACCO PRODUCTS
29 WHOLESALER'S LICENSE.

30 (B) IF THE OTHER TOBACCO PRODUCTS BUSINESS OF A LICENSEE IS
31 TRANSFERRED BECAUSE OF BANKRUPTCY, DEATH, INCOMPETENCY,
32 RECEIVERSHIP, OR OTHERWISE BY OPERATION OF LAW, THE COMPTROLLER
33 SHALL TRANSFER THE LICENSE WITHOUT CHARGE TO THE NEW OWNER OF THE

LICENSEE'S BUSINESS, IF THE TRANSFEREE OTHERWISE QUALIFIES UNDER THIS TITLE FOR THE LICENSE BEING TRANSFERRED.

(C) (1) IF A LICENSED OTHER TOBACCO PRODUCTS WHOLESALER SURRENDERS THE LICENSE TO THE COMPTROLLER AND IF NO DISCIPLINARY PROCEEDINGS ARE PENDING AGAINST THE LICENSEE, THE COMPTROLLER SHALL REFUND A PRO RATA PART OF THE LICENSE FEE FOR THE UNEXPIRED TERM OF THE LICENSE.

(2) A LICENSED OTHER TOBACCO PRODUCTS RETAILER OR A LICENSED TOBACCONIST IS NOT ALLOWED A REFUND FOR THE UNEXPIRED TERM OF THE LICENSE.

16A-208.

(A) SUBJECT TO THE HEARING PROVISIONS OF § 16A-209 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) BUYS OTHER TOBACCO PRODUCTS FOR RESALE:

(I) IN VIOLATION OF A LICENSE; OR

(II) FROM A PERSON WHO IS NOT ~~A LICENSED~~ AN OTHER TOBACCO PRODUCTS MANUFACTURER OR LICENSED OTHER TOBACCO PRODUCTS WHOLESALER;

(4) IS CONVICTED, UNDER THE LAWS OF THE UNITED STATES OR OF ANY OTHER STATE, OF:

(I) A FELONY; OR

(II) A MISDEMEANOR THAT IS A CRIME OF MORAL TURPITUDE AND IS DIRECTLY RELATED TO THE FITNESS AND QUALIFICATION OF THE APPLICANT OR LICENSEE;

(5) VIOLATES TITLE 12 OF THE TAX - GENERAL ARTICLE OR REGULATIONS ADOPTED UNDER THAT TITLE; OR

1 **(6) VIOLATES THIS TITLE OR TITLE 16 OF THIS ARTICLE OR**
2 **REGULATIONS ADOPTED UNDER THESE TITLES.**

3 **(B) SUBJECT TO THE HEARING PROVISIONS OF § 16A-209 OF THIS**
4 **SUBTITLE, THE COMPTROLLER SHALL DENY A LICENSE TO ANY APPLICANT WHO**
5 **HAS HAD A LICENSE REVOKED UNDER THIS SECTION UNTIL:**

6 **(1) 1 YEAR HAS PASSED SINCE THE LICENSE WAS REVOKED; AND**

7 **(2) IT SATISFACTORILY APPEARS TO THE COMPTROLLER THAT**
8 **THE APPLICANT WILL COMPLY WITH THIS TITLE AND ANY REGULATIONS**
9 **ADOPTED UNDER THIS TITLE.**

10 **(C) PRIOR TO THE ISSUANCE OR RENEWAL OF ANY LICENSE, THE**
11 **COMPTROLLER SHALL CONDUCT AN INVESTIGATION WITH REGARD TO:**

12 **(1) THE APPLICANT;**

13 **(2) THE BUSINESS TO BE OPERATED; AND**

14 **(3) THE FACTS SET FORTH IN THE APPLICATION.**

15 **16A-209.**

16 **(A) EXCEPT AS OTHERWISE PROVIDED IN § 10-226 OF THE STATE**
17 **GOVERNMENT ARTICLE, BEFORE THE COMPTROLLER TAKES ANY FINAL**
18 **ACTION UNDER § 16A-208 OF THIS SUBTITLE, THE COMPTROLLER SHALL GIVE**
19 **THE PERSON AGAINST WHOM THE ACTION IS CONTEMPLATED AN OPPORTUNITY**
20 **FOR A HEARING BEFORE THE COMPTROLLER.**

21 **(B) THE COMPTROLLER SHALL GIVE NOTICE AND HOLD THE HEARING**
22 **IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT**
23 **ARTICLE.**

24 **(C) THE COMPTROLLER MAY ADMINISTER OATHS IN A PROCEEDING**
25 **UNDER THIS SECTION.**

26 **(D) THE PERSON AGAINST WHOM THE ACTION IS CONTEMPLATED MAY**
27 **BE REPRESENTED AT THE HEARING BY COUNSEL.**

28 **(E) IF, AFTER DUE NOTICE, THE PERSON AGAINST WHOM THE ACTION IS**
29 **CONTEMPLATED DOES NOT APPEAR, NEVERTHELESS THE COMPTROLLER MAY**
30 **HEAR AND DETERMINE THE MATTER.**

16A-210.

(A) SUBJECT TO THE NOTICE REQUIREMENT OF SUBSECTION (C) OF THIS SECTION, IF A LICENSEE ENGAGES IN AN ACT OR OMISSION THAT IS A GROUND FOR DISCIPLINE UNDER § 16A-208 OF THIS SUBTITLE, THE COMPTROLLER MAY SUSPEND THE LICENSE FOR A CONSECUTIVE PERIOD THAT:

(1) FOR A FIRST OFFENSE, IS NOT LESS THAN 5 NOR MORE THAN 20 BUSINESS DAYS; OR

(2) FOR A SUBSEQUENT OFFENSE, IS NOT LESS THAN 20 BUSINESS DAYS NOR MORE THAN 6 MONTHS.

(B) SUBJECT TO THE NOTICE REQUIREMENT UNDER SUBSECTION (C) OF THIS SECTION, THE COMPTROLLER MAY REVOKE A LICENSE IF A LICENSEE:

(1) WILLFULLY AND PERSISTENTLY ENGAGES IN AN ACT OR OMISSION THAT IS A GROUND FOR DISCIPLINE UNDER § 16A-208(A) OF THIS SUBTITLE; OR

(2) VIOLATES THIS TITLE OR TITLE 12 OF THE TAX – GENERAL ARTICLE OR REGULATIONS ADOPTED UNDER THESE TITLES.

(C) IF A LICENSE IS SUSPENDED OR REVOKED UNDER THIS SECTION:

(1) THE COMPTROLLER SHALL GIVE THE LICENSEE NOTICE OF THE SUSPENSION OR REVOCATION; AND

(2) THE SUSPENSION OR REVOCATION MAY NOT TAKE EFFECT UNTIL AT LEAST 5 BUSINESS DAYS FOLLOWING NOTICE OF THE SUSPENSION OR REVOCATION.

(D) THE TRANSFER, RENEWAL, OR EXPIRATION OF A LICENSE WILL NOT BAR OR ABATE A DISCIPLINARY ACTION UNDER THIS SECTION.

(E) (1) EXCEPT FOR A VIOLATION OF § 10-107 OF THE CRIMINAL LAW ARTICLE, WHENEVER ANY LICENSE ISSUED UNDER THE PROVISIONS OF THIS SUBTITLE IS SUSPENDED OR REVOKED BY THE COMPTROLLER, THE LICENSEE MAY, BEFORE THE EFFECTIVE DATE OF THE SUSPENSION OR REVOCATION, PETITION THE COMPTROLLER FOR PERMISSION TO MAKE AN OFFER OF COMPROMISE CONSISTING OF A SUM OF MONEY IN LIEU OF SERVING THE SUSPENSION OR REVOCATION.

(2) MONEY PAID IN LIEU OF SUSPENSION OR REVOCATION SHALL BE PAID INTO THE GENERAL FUND OF THE STATE.

1 (3) AN OFFER OF COMPROMISE MAY NOT EXCEED \$2,000 IN THE
2 CASE OF RETAIL LICENSEES AND MAY NOT EXCEED \$50,000 FOR OTHER
3 LICENSEES.

4 (4) THE COMPTROLLER MAY ACCEPT THE OFFER OF
5 COMPROMISE IF:

6 (I) THE PUBLIC WELFARE AND MORALS WOULD NOT BE
7 IMPAIRED BY ALLOWING THE LICENSEE TO OPERATE DURING THE PERIOD SET
8 FOR THE SUSPENSION OR REVOCATION; AND

9 (II) THE PAYMENT OF THE SUM OF MONEY WILL ACHIEVE
10 THE DESIRED DISCIPLINARY PURPOSES.

11 (5) THE COMPTROLLER MAY ADOPT REGULATIONS TO CARRY
12 OUT THIS SUBSECTION.

13 16A-211.

14 A PARTY TO A PROCEEDING BEFORE THE COMPTROLLER WHO IS
15 AGGRIEVED BY A FINAL DECISION OF THE COMPTROLLER IN A CONTESTED
16 CASE, AS DEFINED IN § 10-202 OF THE STATE GOVERNMENT ARTICLE, IS
17 ENTITLED TO JUDICIAL REVIEW AS PROVIDED IN §§ 10-222 AND 10-223 OF THE
18 STATE GOVERNMENT ARTICLE.

19 16A-212.

20 (A) EXCEPT AS OTHERWISE PROVIDED IN § 16A-201(B) OF THIS
21 SUBTITLE, A PERSON MAY NOT ACT, ATTEMPT TO ACT, OR OFFER TO ACT AS ~~AN~~ A
22 LICENSED OTHER TOBACCO PRODUCTS MANUFACTURER, A LICENSED OTHER
23 TOBACCO PRODUCTS RETAILER, A LICENSED OTHER TOBACCO PRODUCTS
24 STORAGE WAREHOUSE, ~~OR~~ A LICENSED OTHER TOBACCO PRODUCTS
25 WHOLESALE, OR A LICENSED TOBACCONIST IN THE STATE UNLESS THE
26 PERSON HAS AN APPROPRIATE LICENSE.

27 (B) (1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
28 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING
29 \$1,000 OR IMPRISONMENT NOT EXCEEDING 30 DAYS OR BOTH.

30 (2) EACH DAY THAT A VIOLATION OF THIS SECTION CONTINUES IS
31 A SEPARATE OFFENSE.

32 16A-213.

1 **(A) (1) THE COMPTROLLER SHALL PAY INTO THE GENERAL FUND OF**
2 **THE STATE ALL LICENSE FEES COLLECTED UNDER THIS TITLE.**

3 **(2) ALL LICENSE FEES COLLECTED BY THE COUNTIES ARE**
4 **SUBJECT TO THE DISTRIBUTION PROVISIONS OF § 17-206 OF THIS ARTICLE.**

5 **(B) THE GENERAL ASSEMBLY INTENDS THAT THESE LICENSE FEES BE**
6 **USED TO ADMINISTER THIS TITLE.**

7 **16A-214.**

8 **(A) EACH OTHER TOBACCO PRODUCTS WHOLESALER:**

9 **(1) SHALL GET AN INVOICE FOR EACH PURCHASE OF OTHER**
10 **TOBACCO PRODUCTS;**

11 **(2) SHALL KEEP A RECORD OF ALL OTHER TOBACCO PRODUCTS**
12 **RECEIVED, TO WHICH THE OTHER TOBACCO PRODUCTS WHOLESALER SHALL**
13 **POST EACH DAY:**

14 **(I) THE INVOICE NUMBER;**

15 **(II) THE DATE OF RECEIPT;**

16 **(III) THE QUANTITY RECEIVED;**

17 **(IV) THE BRAND;**

18 **(V) THE MANUFACTURER; AND**

19 **(VI) THE NAME OF THE PERSON FROM WHOM THE OTHER**
20 **TOBACCO PRODUCTS ARE RECEIVED;**

21 **(3) FOR OTHER TOBACCO PRODUCTS SALES TO OTHER TOBACCO**
22 **PRODUCTS RETAILERS AND TOBACCONISTS:**

23 **(I) SHALL KEEP A RECORD OF THE NAME AND ADDRESS OF**
24 **EACH OTHER TOBACCO PRODUCTS RETAILER AND TOBACCONIST TO WHOM A**
25 **SALE IS MADE; AND**

26 **(II) EXCEPT FOR A TRANSFER OF OTHER TOBACCO**
27 **PRODUCTS TO RETAIL STOCK BY A WRITTEN MEMORANDUM, SHALL PREPARE**
28 **FOR EACH SALE AN INVOICE THAT SHOWS THE POLITICAL SUBDIVISION WHERE**
29 **THE OTHER TOBACCO PRODUCTS RETAILER AND EACH TOBACCONIST IS**
30 **LOCATED; AND**

1 (4) SHALL KEEP A COMPLETE AND ACCURATE RECORD OF EACH
2 SALE OF OTHER TOBACCO PRODUCTS TO AN OUT-OF-STATE PERSON FOR
3 RESALE TO OUT-OF-STATE CONSUMERS.

4 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
5 SUBSECTION, EACH OTHER TOBACCO PRODUCTS WHOLESALER SHALL MAKE AN
6 INVENTORY RECORD EACH MONTH OF ALL OTHER TOBACCO PRODUCTS ON THE
7 PREMISES OR UNDER THE CONTROL OF THE OTHER TOBACCO PRODUCTS
8 WHOLESALER:

9 (I) AT THE BEGINNING OR END OF THE MONTH; OR

10 (II) ON ANOTHER SPECIFIC DAY OF THE MONTH, IF THE
11 OTHER TOBACCO PRODUCTS WHOLESALER FINDS IT MORE PRACTICAL TO TAKE
12 INVENTORY ON THAT DAY AND NOTIFIES THE COMPTROLLER THAT INVENTORY
13 WILL BE TAKEN ON THAT DAY.

14 (2) OTHER TOBACCO PRODUCTS TRANSFERRED TO RETAIL
15 STOCK BY WRITTEN MEMORANDUM NEED NOT BE INCLUDED IN THE INVENTORY
16 RECORD.

17 (C) EACH OTHER TOBACCO PRODUCTS WHOLESALER SHALL:

18 (1) KEEP THE RECORDS REQUIRED BY THIS SECTION FOR 6
19 YEARS OR FOR A SHORTER TIME SET BY THE COMPTROLLER; AND

20 (2) ALLOW THE COMPTROLLER TO EXAMINE THE RECORDS.

21 (D) A LICENSED OTHER TOBACCO PRODUCTS RETAILER WHO
22 PURCHASES PREMIUM CIGARS OR PIPE TOBACCO FROM AN OTHER TOBACCO
23 PRODUCTS MANUFACTURER OR A LICENSED TOBACCONIST SHALL, FOR A
24 PERIOD OF 2 YEARS, KEEP AND MAINTAIN AVAILABLE FOR INSPECTION AT THE
25 LICENSE LOCATION DURING BUSINESS HOURS:

26 (1) ALL INVOICES AND BILLS OF LADING; AND

27 (2) ALL RECORDS COVERING ALL PURCHASES AND SALES OF
28 OTHER TOBACCO PRODUCTS.

29 16A-215.

30 (A) A PERSON WHO TRANSPORTS OTHER TOBACCO PRODUCTS BY
31 VEHICLE ON A PUBLIC ROAD SHALL HAVE IN THE VEHICLE A DELIVERY TICKET
32 OR AN INVOICE THAT STATES:

(1) THE NAME AND ADDRESS OF THE SELLER OR CONSIGNOR;

(2) THE NAME AND ADDRESS OF A BUYER OR CONSIGNEE WHO IS:

(I) A PERSON IN THE STATE AUTHORIZED BY TITLE 12 OF THE TAX – GENERAL ARTICLE TO HOLD OTHER TOBACCO PRODUCTS ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID; OR

(II) A PERSON IN ANOTHER JURISDICTION AUTHORIZED TO HOLD OTHER TOBACCO PRODUCTS ON WHICH THE TAX IMPOSED BY THAT JURISDICTION HAS NOT BEEN PAID; AND

(3) THE QUANTITY AND BRANDS OF THE OTHER TOBACCO PRODUCTS THAT ARE BEING TRANSPORTED.

(B) THE COMPTROLLER BY REGULATION MAY REQUIRE A COMMON CARRIER THAT BRINGS OTHER TOBACCO PRODUCTS INTO THE STATE TO SUBMIT TO THE COMPTROLLER A COPY OF ANY FREIGHT BILL RELATING TO THE OTHER TOBACCO PRODUCTS SHIPMENT.

16A-216.

(A) A PERSON MAY NOT SHIP, IMPORT, OR SELL INTO OR WITHIN THIS STATE ANY OTHER TOBACCO PRODUCTS UNLESS THAT PERSON:

(1) IS THE OWNER OF THE BRAND;

(2) IS THE UNITED STATES IMPORTER FOR THE BRAND; OR

(3) IS A DESIGNATED AGENT IN MARYLAND OF:

(I) THE OWNER OF THE BRAND; OR

(II) THE UNITED STATES IMPORTER OF THE BRAND; AND

(4) HOLDS ANY LICENSE REQUIRED BY THIS SUBTITLE.

(B) A PERSON WHO SHIPS, IMPORTS, OR SELLS OTHER TOBACCO PRODUCTS INTO OR WITHIN THIS STATE:

(1) SHALL COMPLY WITH ANY FEDERAL AND STATE REQUIREMENTS CONCERNING THE PLACEMENT OF WARNING LABELS OR OTHER INFORMATION ON THE CONTAINERS OR INDIVIDUAL PACKAGES OF OTHER TOBACCO PRODUCTS; AND

1 (2) SHALL ENSURE THAT THE CONTAINERS OR INDIVIDUAL
2 PACKAGES OF OTHER TOBACCO PRODUCTS DO NOT CONTAIN ANY INFORMATION
3 OR MARKINGS THAT ARE FALSE, MISLEADING, OR CONTRARY TO:

4 (I) FEDERAL TRADEMARK OR TAX LAWS;

5 (II) THE TRADEMARK LAW OF THIS STATE UNDER TITLE 1,
6 SUBTITLE 4 OF THIS ARTICLE; OR

7 (III) THE TAX LAWS OF THIS STATE UNDER TITLE 12 OF THE
8 TAX – GENERAL ARTICLE.

9 (C) A PERSON WHO SHIPS, IMPORTS, OR SELLS OTHER TOBACCO
10 PRODUCTS INTO OR WITHIN THIS STATE IN VIOLATION OF THIS SECTION IS
11 SUBJECT TO DISCIPLINARY ACTION BY THE COMPTROLLER UNDER § 16A-208
12 OF THIS SUBTITLE AND TO THE PENALTY SPECIFIED IN § 13-1015 OF THE
13 TAX – GENERAL ARTICLE.

14 16A-217.

15 (A) THIS SECTION APPLIES TO A PERSON WHO IS ENGAGED IN THE
16 BUSINESS OF SELLING OR DISTRIBUTING OTHER TOBACCO PRODUCTS.

17 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
18 SUBSECTION, A PERSON COVERED UNDER THIS SECTION MAY NOT:

19 (I) SELL OR SHIP OTHER TOBACCO PRODUCTS, ORDERED
20 OR PURCHASED BY MAIL OR THROUGH A COMPUTER NETWORK, TELEPHONIC
21 NETWORK, OR OTHER ELECTRONIC NETWORK BY A CONSUMER OR OTHER
22 UNLICENSED RECIPIENT, DIRECTLY TO A CONSUMER OR OTHER UNLICENSED
23 RECIPIENT IN THIS STATE; OR

24 (II) CAUSE OTHER TOBACCO PRODUCTS, ORDERED OR
25 PURCHASED BY MAIL OR THROUGH A COMPUTER NETWORK, TELEPHONIC
26 NETWORK, OR OTHER ELECTRONIC NETWORK BY A CONSUMER OR OTHER
27 UNLICENSED RECIPIENT, TO BE SHIPPED DIRECTLY TO A CONSUMER OR OTHER
28 UNLICENSED RECIPIENT IN THIS STATE.

29 (2) A LICENSED OTHER TOBACCO PRODUCTS RETAILER OR
30 LICENSED TOBACCONIST MAY DELIVER ~~NO~~ NOT MORE THAN TWO PACKAGES OF
31 OTHER TOBACCO PRODUCTS DIRECTLY TO A CONSUMER IF THE DELIVERY IS
32 MADE BY THE LICENSED OTHER TOBACCO PRODUCTS RETAILER OR LICENSED
33 TOBACCONIST OR AN EMPLOYEE OF THE LICENSED OTHER TOBACCO PRODUCTS
34 RETAILER OR LICENSED TOBACCONIST.

1 **(C) (1) A LICENSEE WHO SELLS OR SHIPS OTHER TOBACCO**
2 **PRODUCTS IN VIOLATION OF THIS SECTION OR CAUSES OTHER TOBACCO**
3 **PRODUCTS TO BE SHIPPED IN VIOLATION OF THIS SECTION IS:**

4 **(I) SUBJECT TO DISCIPLINE BY THE COMPTROLLER UNDER**
5 **§ 16A-208 OF THIS SUBTITLE; AND**

6 **(II) GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT**
7 **TO A FINE NOT EXCEEDING \$50 FOR EACH PACKAGE OF OTHER TOBACCO**
8 **PRODUCTS TRANSPORTED OR IMPRISONMENT NOT EXCEEDING 2 YEARS OR**
9 **BOTH.**

10 **(2) A PERSON OTHER THAN A LICENSEE WHO SELLS OR SHIPS**
11 **OTHER TOBACCO PRODUCTS IN VIOLATION OF THIS SECTION OR CAUSES OTHER**
12 **TOBACCO PRODUCTS TO BE SHIPPED IN VIOLATION OF THIS SECTION IS GUILTY**
13 **OF A FELONY AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$50**
14 **FOR EACH PACKAGE OF OTHER TOBACCO PRODUCTS TRANSPORTED OR**
15 **IMPRISONMENT NOT EXCEEDING 2 YEARS OR BOTH.**

16 **16A-218.**

17 **UNLESS OTHERWISE SPECIFIED IN THIS TITLE, A PERSON WHO VIOLATES**
18 **ANY PROVISION OF THIS TITLE IS GUILTY OF A MISDEMEANOR AND ON**
19 **CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000 OR IMPRISONMENT**
20 **NOT EXCEEDING 30 DAYS OR BOTH.**

21 **Article – Tax – General**

22 **12-101.**

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

24 **(b) “Cigarette” means any size or shaped roll for smoking that is made of**
25 **tobacco or tobacco mixed with another ingredient and wrapped in paper or in any**
26 **other material except tobacco.**

27 **(c) “MANUFACTURER” MEANS A PERSON WHO ACTS AS A**
28 **MANUFACTURER AS DEFINED IN § 16-201 OF THE BUSINESS REGULATION**
29 **ARTICLE OR AS AN OTHER TOBACCO PRODUCTS MANUFACTURER AS DEFINED IN**
30 **§ 16A-101 OF THE BUSINESS REGULATION ARTICLE.**

31 **[(c)] (D) “Other tobacco product” means:**

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

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

[(d)] (E) “OTHER TOBACCO PRODUCTS RETAILER” MEANS A PERSON AUTHORIZED UNDER § 16A–205(B) OF THE BUSINESS REGULATION ARTICLE TO PURCHASE OTHER TOBACCO PRODUCTS ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID.

(F) “Sell” means to exchange or transfer, or to make an agreement to exchange or transfer, title or possession of property, in any manner or by any means, for consideration.

[(e)] ~~(F)~~ (G) “Tax stamp” means a device in the design and denomination that the Comptroller authorizes by regulation for the purpose of being affixed to a package of cigarettes as evidence that the tobacco tax is paid.

[(f)] ~~(G)~~ (H) “TOBACCONIST” MEANS A PERSON AUTHORIZED UNDER § 16A–205(E) OF THE BUSINESS REGULATION ARTICLE TO PURCHASE OTHER TOBACCO PRODUCTS ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID.

(I) “Unstamped cigarettes” means a package of cigarettes to which tax stamps are not affixed in the amount and manner required in § 12–304 of this title.

[(g)] ~~(H)~~ (J) “Wholesale price” means the price for which a wholesaler buys other tobacco products, exclusive of any discount, trade allowance, rebate, or other reduction.

[(h)] ~~(I)~~ (K) “Wholesaler” means, unless the context requires otherwise [:

(1)], a person who acts as a wholesaler as defined in § 16–201 of the Business Regulation Article]; or

(2) a person who:

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

(ii) sells other tobacco products to another person for resale] **OR AS AN OTHER TOBACCO PRODUCTS WHOLESALER AS DEFINED IN § 16A–101 OF THE BUSINESS REGULATION ARTICLE.**

12–102.

(a) Except as provided in § 12–104 of this subtitle, a tax is imposed on cigarettes and other tobacco products in the State.

(b) A county, municipal corporation, special taxing district, or other political subdivision of the State may not impose a tax on cigarettes **OR OTHER TOBACCO PRODUCTS**.

12–103.

(a) A rebuttable presumption exists that any cigarette or other tobacco product in the State is subject to the tobacco tax.

(b) Cigarettes or other tobacco products are contraband tobacco products if they:

(1) are possessed or sold in the State in a manner that is not authorized under this title or under Title 16 **OR TITLE 16A** of the Business Regulation Article; or

(2) are transported by vehicle in the State by a person who does not have, in the vehicle, the records required by § 16–219 **OR § 16A–215** of the Business Regulation Article for the transportation of cigarettes or other tobacco products.

(c) A person who possesses cigarettes or other tobacco products has the burden of proving that the cigarettes or other tobacco products are not subject to the tobacco tax.

12–104.

(a) “Consumer” means a person who possesses cigarettes or other tobacco products for a purpose other than selling or transporting the cigarettes or other tobacco products.

(b) The tobacco tax does not apply to:

(1) cigarettes that a licensed wholesaler under Title 16 of the Business Regulation Article is holding for sale outside the State or to a United States armed forces exchange or commissary;

(2) other tobacco products that **[a] AN OTHER TOBACCO PRODUCTS** wholesaler **LICENSED UNDER TITLE 16A OF THE BUSINESS REGULATION ARTICLE** is holding for sale outside the State or to a United States armed forces exchange or commissary; or

(3) cigarettes or other tobacco products that:

(i) a consumer brings into the State:

1 1. if the quantity brought from another state does not
2 exceed:

3 A. for a nonresident consumer traveling through this
4 State, other tobacco products having a retail value of \$25 or 1 carton of cigarettes; or

5 B. for any other consumer, other tobacco products having
6 a retail value of \$5 or 2 packages of cigarettes; or

7 2. if the quantity brought from a United States armed
8 forces installation or reservation does not exceed:

9 A. for a consumer who is a member of an armed forces
10 unit or who is entitled by law to make a purchase at an armed forces exchange, other
11 tobacco products having a retail value of \$50 or 2 cartons of cigarettes; or

12 B. for any other consumer, other tobacco products having
13 a retail value of \$5 or 2 packages of cigarettes that were bought at an armed forces
14 exchange or commissary;

15 (ii) a person is transporting by vehicle in the State if the person
16 has, in the vehicle, the records required by § 16-219 **OR § 16A-215** of the Business
17 Regulation Article for the transportation of cigarettes or other tobacco products; or

18 (iii) are held in storage in a licensed storage warehouse on behalf
19 of a licensed cigarette manufacturer **OR A LICENSED AN OTHER TOBACCO**
20 **PRODUCTS MANUFACTURER.**

21 12-201.

22 (a) A manufacturer shall complete and file with the Comptroller a tobacco
23 tax return:

24 (1) on or before the 15th day of the month that follows the month in
25 which the manufacturer distributes in the State free sample cigarettes ~~OR OTHER~~
26 ~~TOBACCO PRODUCTS~~ of the manufacturer; and

27 (2) if the Comptroller so specifies, by regulation, on other dates for
28 each month in which the manufacturer does not distribute any sample cigarettes ~~OR~~
29 ~~OTHER TOBACCO PRODUCTS.~~

30 **(B) A LICENSED OTHER TOBACCO PRODUCTS MANUFACTURER SHALL**
31 **FILE THE INFORMATION RETURN THAT THE COMPTROLLER REQUIRES.**

1 ~~(b)~~ **(C)** A licensed storage warehouse operator AND A LICENSED OTHER
2 TOBACCO PRODUCTS STORAGE WAREHOUSE OPERATOR shall file the information
3 return that the Comptroller requires.

4 12-202.

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

7 (1) for cigarettes:

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

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

14 (2) for other tobacco products, [on the dates and for the periods that
15 the Comptroller specifies by regulation] **ON OR BEFORE THE 21ST DAY OF THE**
16 **MONTH THAT FOLLOWS THE MONTH IN WHICH THE WHOLESALER HAS**
17 **POSSESSION OF OTHER TOBACCO PRODUCTS ON WHICH THE TOBACCO TAX HAS**
18 **NOT BEEN PAID.**

19 (b) Each return shall state the quantity of cigarettes or the wholesale price of
20 other tobacco products sold during the period that the return covers.

21 12-301.

22 In this subtitle, "licensed wholesaler" means a wholesaler who is licensed under
23 Title 16, Subtitle 2 of the Business Regulation Article to act as a wholesaler **OR**
24 **UNDER TITLE 16A, SUBTITLE 2 OF THE BUSINESS REGULATION ARTICLE TO**
25 **ACT AS AN OTHER TOBACCO PRODUCTS WHOLESALER.**

26 12-302.

27 (a) A manufacturer of sample cigarettes ~~OR OTHER TOBACCO PRODUCTS~~
28 shall pay the tobacco tax on those cigarettes ~~OR OTHER TOBACCO PRODUCTS~~
29 distributed in the State without charge, in the manner that the Comptroller requires
30 by regulation, with the return that covers the period in which the manufacturer
31 distributed those cigarettes ~~OR OTHER TOBACCO PRODUCTS.~~

32 (b) The wholesaler who first possesses in the State unstamped cigarettes for
33 which tax stamps are required shall pay the tobacco tax on those cigarettes by buying
34 and affixing tax stamps.

(c) [(1)] The tobacco tax on other tobacco products shall be paid by the wholesaler who sells the other tobacco products to a retailer [or consumer] in the State.

[(2)] If a retailer or consumer possesses other tobacco products in the State on which the tobacco tax has not been paid, the retailer or consumer shall pay the tobacco tax on those other tobacco products.]

(D) (1) A LICENSED OTHER TOBACCO PRODUCTS RETAILER OR A LICENSED TOBACCONIST SHALL PAY THE TOBACCO TAX ON OTHER TOBACCO PRODUCTS ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID BY FILING A QUARTERLY TAX RETURN, WITH ANY SUPPORTING SCHEDULES, ON FORMS PROVIDED BY THE COMPTROLLER ON THE FOLLOWING DATES COVERING TAX LIABILITIES IN THE PRECEDING QUARTER:

(I) JANUARY 21;

(II) APRIL 21;

(III) JULY 21; AND

(IV) OCTOBER 21.

(2) A LICENSED OTHER TOBACCO PRODUCTS RETAILER OR A LICENSED TOBACCONIST REQUIRED TO FILE A TAX RETURN UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL PAY A TOBACCO TAX AT THE RATE PROVIDED IN § 12-105(B) OF THIS TITLE BASED ON THE INVOICE AMOUNT CHARGED BY THE LICENSED OTHER TOBACCO PRODUCTS MANUFACTURER, EXCLUSIVE OF ANY DISCOUNT, TRADE ALLOWANCE, REBATE, OR OTHER REDUCTION.

~~12-304.~~

~~(a) A manufacturer that pays the tobacco tax shall indicate prominently on each package of cigarettes OR OTHER TOBACCO PRODUCTS that:~~

~~(1) the package contains sample cigarettes OR OTHER TOBACCO PRODUCTS that are not for sale; and~~

~~(2) all applicable tobacco taxes on those cigarettes OR OTHER TOBACCO PRODUCTS have been paid.~~

[12-306.

(a) The Comptroller shall establish, by regulation, a system of administering, collecting, and enforcing the tobacco tax on other tobacco products.

(b) Regulations adopted under this section may include:

(1) self-assessment, filing of returns, and maintenance and retention of records by wholesalers or retailers;

(2) payment of the tax by:

(i) a wholesaler who sells other tobacco products to a retailer or consumer in the State; or

(ii) a retailer or consumer who possesses other tobacco products in the State on which the tobacco tax has not been paid; and

(3) any other provision that the Comptroller considers necessary to efficiently and economically administer, collect, and enforce the tax.]

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(h) (1) The Comptroller may require a person subject to the tobacco tax to post security for the tax in the following amounts:

(i) for a ~~CIGARETTE~~ manufacturer or wholesaler:

1. \$10,000, plus

2. the amount, if any, by which the tobacco tax due for any 1 month exceeds \$10,000[.];

(ii) for a subwholesaler or vending machine operator:

1. \$1,000, plus

2. the amount, if any, by which the tobacco tax due for any 1 month exceeds \$1,000; AND

**(III) FOR AN OTHER TOBACCO PRODUCTS ~~MANUFACTURER~~
~~OR~~ WHOLESALER:**

1. \$5,000, PLUS

**2. THE AMOUNT, IF ANY, BY WHICH THE TOBACCO
TAX DUE FOR ANY 1 MONTH EXCEEDS \$5,000.**

(2) Except as provided in paragraph (5) of this subsection, the Comptroller may exempt a person from posting security for the tobacco tax if the person is and has been for the past 5 years:

(i) licensed as required under § 16–202 of the Business Regulation Article to act as a wholesaler **OR § 16A–201 TO ACT AS AN OTHER TOBACCO PRODUCTS WHOLESALER**; and

(ii) 1. in continuous compliance with the tobacco tax laws, as determined under paragraph (3) of this subsection; and

2. in continuous compliance with the conditions of the person's security posted under this subsection.

(3) For purposes of paragraph (2) of this subsection, a person is in continuous compliance with the tobacco tax laws for a period if the person has not, at any time during that period:

(i) failed to pay any tobacco tax or any tobacco tax assessment when due;

(ii) failed to file a tobacco tax return when due; or

(iii) otherwise violated any of the provisions of Title 12 or Title 13 of this article or Title 16 **OR TITLE 16A** of the Business Regulation Article.

(4) (i) An exemption granted under paragraph (2) of this subsection is effective only to the extent that a person's potential tobacco tax liability does not exceed an amount determined by the Comptroller based on the person's experience during the 5-year compliance period under paragraph (2) of this subsection.

(ii) The Comptroller may revoke an exemption granted to a person under paragraph (2) of this subsection if the person at any time fails to be in continuous compliance with the tobacco tax laws, as described in paragraph (3) of this subsection.

(iii) The Comptroller may reinstate an exemption revoked under subparagraph (ii) of this paragraph if the person meets the requirements of paragraph (2)(i) and (ii) of this subsection for a period of 2 years following the revocation.

(5) The Comptroller may not exempt a person from posting a bond or other security for the tobacco tax unless the Comptroller determines that the person is solvent and financially able to pay the person's potential tobacco tax liability.

(6) If a corporation is granted an exemption from posting a bond or other security for the tobacco tax, any officer of the corporation who exercises direct

1 control over its fiscal management is personally liable for any tobacco tax, interest and
2 penalties owed by the corporation.

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4 A person who willfully ships, imports, sells into or within, or transports within,
5 this State cigarettes or other tobacco products on which the tobacco tax has not been
6 paid in violation of Title 12 of this article or § 16–219 [or], § 16–222, **§ 16A–215, OR §**
7 **16A–216** of the Business Regulation Article is guilty of a felony and, on conviction, is
8 subject to a fine not exceeding \$50 for each carton of cigarettes **OR EACH PACKAGE**
9 **OF OTHER TOBACCO PRODUCTS** transported or imprisonment not exceeding 2 years
10 or both.

11 SECTION 2. AND BE IT FURTHER ENACTED, That the Comptroller shall
12 adopt regulations to carry out this Act.

13 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 May 1, 2011.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.