

HOUSE BILL 753

C2

0lr1353

By: **Delegates Ross, Barnes, Benson, Healey, Manno, Niemann, Pena-Melnyk, Ramirez, and Taylor**

Introduced and read first time: February 5, 2010

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Business Regulation – Pawnbrokers – Prohibited Sale of Cosmetics, Drugs,**
3 **and Food**

4 FOR the purpose of providing that this Act applies to all pawnbrokers wherever
5 located in the State; prohibiting a pawnbroker from selling, trading, bartering,
6 or arranging for the sale of cosmetics, drugs, food, and certain other items;
7 requiring a pawnbroker to display conspicuously a sign stating a certain
8 prohibition in a certain manner; requiring the Secretary of Labor, Licensing,
9 and Regulation to revoke a pawnbroker’s license, subject to certain hearing
10 provisions, if the Secretary finds that the pawnbroker has violated this Act;
11 providing that certain criminal and civil penalties do not apply to violations of
12 this Act; making conforming changes; defining certain terms; and generally
13 relating to the prohibition against pawnbrokers selling, trading, or bartering
14 certain cosmetics, drugs, food, and other items.

15 BY adding to

16 Article – Business Regulation
17 Section 12–404
18 Annotated Code of Maryland
19 (2004 Replacement Volume and 2009 Supplement)

20 BY repealing and reenacting, with amendments,

21 Article – Business Regulation
22 Section 12–502
23 Annotated Code of Maryland
24 (2004 Replacement Volume and 2009 Supplement)

25 BY repealing and reenacting, without amendments,

26 Article – Health – General
27 Section 21–101

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2009 Replacement Volume)

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

5 **Article – Business Regulation**

6 **12-404.**

7 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
8 MEANINGS INDICATED.

9 (2) “COSMETICS” HAS THE MEANING STATED IN § 21-101 OF THE
10 HEALTH – GENERAL ARTICLE;

11 (3) “DEVICES” HAS THE MEANING STATED IN § 21-101 OF THE
12 HEALTH – GENERAL ARTICLE;

13 (4) “DRUGS” HAS THE MEANING STATED IN § 21-101 OF THE
14 HEALTH – GENERAL ARTICLE;

15 (5) “FOOD” HAS THE MEANING STATED IN § 21-101 OF THE
16 HEALTH – GENERAL ARTICLE; AND

17 (6) “FOOD ADDITIVES” HAS THE MEANING STATED IN § 21-101 OF
18 THE HEALTH – GENERAL ARTICLE.

19 (B) THIS SECTION APPLIES TO ALL PAWNBROKERS WHEREVER
20 LOCATED IN THE STATE.

21 (C) A PAWNBROKER MAY NOT SELL, TRADE, BARTER, OR ARRANGE FOR
22 THE SALE OF COSMETICS, DEVICES, DRUGS, FOOD, OR FOOD ADDITIVES.

23 (D) EACH PAWNBROKER SHALL DISPLAY CONSPICUOUSLY A SIGN
24 VISIBLE FROM THE MAIN ENTRANCE OF THE PAWNBROKER’S PLACE OF
25 BUSINESS CONTAINING THE FOLLOWING STATEMENT IN LETTERS OF AT LEAST
26 ONE AND ONE-HALF INCHES IN HEIGHT AND A CORRESPONDING WIDTH:
27 “RECEIVING COSMETICS, DEVICES, DRUGS, FOOD, OR FOOD ADDITIVES IN
28 EXCHANGE FOR MONEY, TRADE, BARTER, OR OTHER VALUABLE
29 CONSIDERATION IS PROHIBITED.”.

30 (E) (1) SUBJECT TO THE HEARING PROVISIONS OF § 12-210 OF THIS
31 TITLE, THE SECRETARY SHALL REVOKE THE LICENSE OF A PAWNBROKER IF

1 THE SECRETARY DETERMINES THAT THE PAWNBROKER HAS VIOLATED THIS
2 SECTION.

3 (2) THE CRIMINAL AND CIVIL PENALTY PROVISIONS OF § 12-502
4 OF THIS TITLE DO NOT APPLY TO A PAWNBROKER WHO VIOLATES SUBSECTIONS
5 (C) AND (D) OF THIS SECTION.

6 12-502.

7 (a) (1) [A] EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A person
8 who willfully or knowingly violates this title is guilty of a misdemeanor and, on
9 conviction, is subject to a fine not exceeding \$10,000 or imprisonment not exceeding 2
10 years or both.

11 (2) [Each] EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE,
12 EACH associate, employee, manager, or partner who participates in or consents to a
13 violation of this title is guilty of a misdemeanor and, on conviction, is subject to a fine
14 not exceeding \$5,000 or imprisonment not exceeding 1 year or both.

15 (3) Each violation of this title is a separate offense.

16 (b) (1) [The] EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, THE
17 Secretary may impose on a person who violates any provision of this title a penalty not
18 exceeding \$5,000 for each violation.

19 (2) In setting the amount of the penalty, the Secretary shall consider:

20 (i) the seriousness of the violation;

21 (ii) the harm caused by the violation;

22 (iii) the good faith of the violator;

23 (iv) any history of previous violations by the violator; and

24 (v) any other relevant factors.

25 (3) The Secretary shall pay any penalty collected under this subsection
26 into the General Fund of the State.

27 **Article – Health – General**

28 21-101.

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

30 (b) “Advertisement” means any representation that:

1 (1) Is intended or is likely to induce, directly or indirectly, any person
2 to purchase any food, drug, device, or cosmetic; and

3 (2) Is published by any means other than labeling.

4 (c) (1) “Color additive” means any material that:

5 (i) Is a dye, pigment, or other substance made by a process of
6 synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or
7 without intermediate or final change of identity, from a vegetable, animal, mineral, or
8 other source; or

9 (ii) When added or applied to a food, drug, or cosmetic, or to any
10 part of the human body, is capable, alone or through reaction with any other
11 substance, of imparting color, including black, white, or intermediate grays, to the
12 food, drug, cosmetic, or body.

13 (2) “Color additive” does not include any material that is not a color
14 additive under the federal act.

15 (d) “Consumer commodity” means any food, drug, device, or cosmetic that is
16 not:

17 (1) Tobacco or a tobacco product;

18 (2) A commodity that is subject to packaging or labeling requirements
19 imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the federal
20 Animal Virus, Serum, Toxin, Antitoxin Act;

21 (3) A drug that is subject to the provisions of § 353(b)(1) of the federal
22 act;

23 (4) A beverage that is subject to or complies with packaging or labeling
24 requirements imposed by the federal Bureau of Alcohol, Tobacco and Firearms; or

25 (5) A seed or other commodity that is subject to the provisions of §§
26 9–206 through 9–213 of the Agriculture Article.

27 (e) (1) “Cosmetic” means any substance, or any component of a substance,
28 that is intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or
29 otherwise applied to the human body for cleansing, beautifying, promoting
30 attractiveness, or altering appearance.

31 (2) “Cosmetic” does not include soap.

32 (f) “Device” means any instrument, apparatus, or contrivance, or any part or
33 accessory of an instrument, apparatus, or contrivance, that is intended:

1 (1) For use in the diagnosis, cure, mitigation, treatment, or prevention
2 of human disease; or

3 (2) To affect the structure or any function of the human body for
4 medical, surgical, or therapeutic purposes.

5 (g) (1) “Drug” means any substance or component of a substance:

6 (i) That is recognized in an official compendium;

7 (ii) That is intended for use in the diagnosis, cure, mitigation,
8 treatment, or prevention of disease in human beings; or

9 (iii) Except for food, that is intended to affect the structure or
10 any function of the human body.

11 (2) “Drug” does not include a device.

12 (h) “Federal act” means the Federal Food, Drug, and Cosmetic Act as that act
13 appears at 21 U.S.C. § 301 et seq.

14 (i) “Food” means:

15 (1) Any substance that is used as food or drink for human beings or as
16 a component of food or drink for human beings; or

17 (2) Chewing gum or any substance that is used as a component of
18 chewing gum.

19 (j) (1) “Food additive” means any substance:

20 (i) The intended use of which results or reasonably may be
21 expected to result, directly or indirectly, in the substance becoming a component of
22 food or otherwise affecting the characteristics of food, including any substance used to
23 produce, manufacture, pack, process, prepare, treat, package, transport, or hold food,
24 or any source of radiation that is intended for any of these uses; and

25 (ii) That is not recognized generally by qualified scientific
26 experts as having been shown to be safe under the conditions of its intended use:

27 1. Through scientific procedures; or

28 2. Through either scientific procedures or experience
29 based on common use, if the substance was used in a food before January 1, 1958.

30 (2) “Food additive” does not include a color additive.

1 (k) "Label" means a display of written, printed, or graphic matter on the
2 container, other than the package liner, of a substance.

3 (l) "Labeling" means any label or other written or graphic material that:

4 (1) Is on a substance or its container or its wrapping; or

5 (2) Accompanies a substance.

6 (m) "Official compendium" means the most recent revision of the United
7 States Pharmacopoeia and National Formulary, the official Homeopathic
8 Pharmacopoeia of the United States, or any of their current supplements.

9 (n) (1) "Package" means any container or wrapping of a consumer
10 commodity that is used for delivery or display to retail consumers.

11 (2) "Package" does not include any container or wrapping that is used
12 only for:

13 (i) Transportation of a consumer commodity in bulk or quantity
14 to a manufacturer, packer, processor, or wholesale or retail distributor; or

15 (ii) Shipment or delivery of a consumer commodity to a retail
16 customer, if the container or wrapping bears no printed material that relates to a
17 particular consumer commodity.

18 (o) "Person" includes:

19 (1) An operator of a facility that is owned by a State or local unit of
20 government; or

21 (2) A State or local unit of government if the State or local unit of
22 government is the operator of the facility.

23 (p) "Secretary" means for the purposes of Subtitles 1, 2, 3, 4, 8, and 11 of this
24 title, the Secretary of Health and Mental Hygiene or the Secretary's designee.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2010.