

SENATE BILL 703

J1, C2, Q7

0lr2574
CF 0lr2864

By: **Senators Garagiola, Forehand, Kelley, King, Lenett, Madaleno, Muse, Pinsky, and Robey**

Introduced and read first time: February 10, 2010

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Tobacco-Related Products – Definitions and Distribution to Minors**

3 FOR the purpose of altering the definition of “cigarette” in connection with tobacco
4 taxes, the regulation of cigarette business, the sale of cigarettes below cost, and
5 certain cigarette fire safety standards to include certain tobacco products that
6 are wrapped in certain substances and weigh less than a certain amount and
7 are likely to be offered to, or purchased by, consumers as cigarettes; prohibiting
8 the distribution of certain tobacco products, cigarette rolling papers, and
9 tobacco-related coupons to minors; requiring photo identification checks in
10 connection with the distribution of certain
11 tobacco-related products to minors; requiring photo identification checks in
12 connection with the distribution of certain tobacco-related products to minors;
13 prohibiting minors from purchasing, possessing, or using cigarette rolling
14 papers or certain tobacco-related products; establishing certain civil penalties;
15 repealing a county-specific provision concerning civil enforcement of youth
16 tobacco violations applicable to Carroll County, Garrett County, and St. Mary’s
17 County; providing that this Act does not preempt any county or municipal law
18 that regulates tobacco products; and generally relating to tobacco-related
19 products and distribution to minors.

20 BY repealing

21 Article 24 – Political Subdivisions – Miscellaneous Provisions
22 Section 15–102.1
23 Annotated Code of Maryland
24 (2005 Replacement Volume and 2009 Supplement)

25 BY repealing

26 Article – Criminal Law
27 Section 10–108
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2002 Volume and 2009 Supplement)

2 BY repealing and reenacting, with amendments,
3 Article – Business Regulation
4 Section 16–101(b) and 16–601
5 Annotated Code of Maryland
6 (2004 Replacement Volume and 2009 Supplement)

7 BY repealing and reenacting, with amendments,
8 Article – Commercial Law
9 Section 11–501(c)
10 Annotated Code of Maryland
11 (2005 Replacement Volume and 2009 Supplement)

12 BY adding to
13 Article – Health – General
14 Section 24–1701 through 24–1707 to be under the new subtitle “Subtitle 17.
15 Distribution of Tobacco–Related Products to Minors”
16 Annotated Code of Maryland
17 (2009 Replacement Volume)

18 BY repealing and reenacting, with amendments,
19 Article – Tax – General
20 Section 12–101(b)
21 Annotated Code of Maryland
22 (2004 Replacement Volume and 2009 Supplement)

23 BY repealing and reenacting, without amendments,
24 Article – Tax – General
25 Section 12–101(c)
26 Annotated Code of Maryland
27 (2004 Replacement Volume and 2009 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
29 MARYLAND, That Section(s) 15–102.1 of Article 24 – Political Subdivisions –
30 Miscellaneous Provisions of the Annotated Code of Maryland be repealed.

31 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 10–108 of
32 Article – Criminal Law of the Annotated Code of Maryland be repealed.

33 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland
34 read as follows:

35 **Article – Business Regulation**

36 16–101.

1 (b) "Cigarette" means any size or shaped roll for smoking that is made of
2 tobacco or tobacco mixed with another ingredient and:

3 (1) IS WRAPPED IN PAPER OR IN ANY OTHER MATERIAL EXCEPT TOBACCO;

4 (2) IS WRAPPED IN PAPER CONTAINING TOBACCO AND, WITH THE
5 WRAPPER, WEIGHS LESS THAN 3 POUNDS PER THOUSAND CIGARETTES; OR

6 (3) (I) CONTAINS TOBACCO, IN ANY FORM, THAT IS
7 FUNCTIONAL IN THE PRODUCT; AND

8 (II) IS LIKELY TO BE OFFERED TO OR PURCHASED BY
9 CONSUMERS AS A CIGARETTE, AS DESCRIBED IN ITEMS (1) AND (2) OF THIS
10 SUBSECTION, BECAUSE OF:

11 1. APPEARANCE;

12 2. THE TYPE OF TOBACCO USED IN THE FILLER; OR

13 3. PACKAGING.

14 16-601.

15 (a) In this subtitle the following words have the meanings indicated.

16 (b) "Cigarette" [has the meaning stated in § 16-101 of this title] MEANS ANY
17 SIZE OR SHAPED ROLL FOR SMOKING THAT:

18 (1) IS MADE OF TOBACCO OR TOBACCO MIXED WITH ANOTHER
19 INGREDIENT; AND

20 (2) IS WRAPPED IN PAPER OR ANY OTHER MATERIAL EXCEPT
21 TOBACCO.

22 (c) "Commission" means the State Fire Prevention Commission.

23 (d) "Consumer testing" means an assessment of cigarettes that is conducted
24 by a manufacturer or conducted under the control and direction of a manufacturer for
25 the purpose of evaluating consumer acceptance of the cigarettes by using only the
26 quantity of cigarettes that is reasonably necessary for the assessment.

27 (e) "Manufacturer" has the meaning stated in § 16-201 of this title.

28 (f) "Quality control and quality assurance program" means laboratory
29 procedures implemented to ensure that:

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

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

5 (g) "Repeatability" means the range of values within which the repeat results
6 of cigarette test trials from a single laboratory fall 95% of the time.

7 (h) "Retailer" has the meaning stated in § 16-201 of this title.

8 (i) (1) "Sale" means the exchange or transfer, or the agreement to
9 exchange or transfer, title or possession of property in any manner or by any means
10 for consideration.

11 (2) "Sale" includes:

12 (i) the giving or distribution of cigarettes as samples, prizes,
13 gifts, or in connection with consumer testing; and

14 (ii) the exchange of cigarettes for any consideration other than
15 money.

16 (j) "Subwholesaler" has the meaning stated in § 16-201 of this title.

17 (k) "Vending machine operator" has the meaning stated in § 16-201 of this
18 title.

19 (l) "Wholesaler" has the meaning stated in § 16-201 of this title.

20 **Article – Commercial Law**

21 11-501.

22 (c) [(1) "Cigarettes"] **"CIGARETTE"** means any size or shaped roll for
23 smoking that is made of tobacco or tobacco mixed with another ingredient and:

24 **(1) IS wrapped in paper or in any other material except tobacco;**

25 **(2) IS WRAPPED IN PAPER CONTAINING TOBACCO AND, WITH THE**
26 **WRAPPER, WEIGHS LESS THAN 3 POUNDS PER THOUSAND CIGARETTES; OR**

27 **(3) (I) CONTAINS TOBACCO, IN ANY FORM, THAT IS**
28 **FUNCTIONAL IN THE PRODUCT; AND**

1 (II) IS LIKELY TO BE OFFERED TO OR PURCHASED BY
2 CONSUMERS AS A CIGARETTE, AS DESCRIBED IN ITEMS (1) AND (2) OF THIS
3 SUBSECTION, BECAUSE OF:

- 4 1. APPEARANCE;
- 5 2. THE TYPE OF TOBACCO USED IN THE FILLER; OR
- 6 3. PACKAGING.

7 [(2) “Cigarettes” does not include cigars.]

8 Article – Health – General

9 SUBTITLE 17. DISTRIBUTION OF TOBACCO-RELATED PRODUCTS TO MINORS.

10 24-1701.

11 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
12 INDICATED.

13 (B) “DISTRIBUTE” MEANS TO:

- 14 (1) GIVE, SELL, DELIVER, DISPENSE, OR ISSUE;
- 15 (2) OFFER TO GIVE, SELL, DELIVER, DISPENSE, OR ISSUE; OR
- 16 (3) CAUSE OR HIRE ANY INDIVIDUAL TO GIVE, SELL, DELIVER,
17 DISPENSE, OR ISSUE OR OFFER TO GIVE, SELL, DELIVER, DISPENSE, OR ISSUE.

18 (C) “TOBACCO PRODUCT” MEANS A SUBSTANCE CONTAINING TOBACCO,
19 INCLUDING CIGARETTES, CIGARS, SMOKING TOBACCO, SNUFF, SMOKELESS
20 TOBACCO, AND CANDY-LIKE PRODUCTS THAT CONTAIN TOBACCO.

21 24-1702.

22 THIS SUBTITLE DOES NOT APPLY TO THE DISTRIBUTION TO A MINOR OF:

23 (1) A TOBACCO PRODUCT OR CIGARETTE ROLLING PAPERS IF
24 THE MINOR IS ACTING AS THE AGENT OF THE MINOR’S EMPLOYER IF THE
25 EMPLOYER DISTRIBUTES TOBACCO PRODUCTS OR CIGARETTE ROLLING PAPERS
26 FOR COMMERCIAL PURPOSES; OR

1 **(2) A COUPON THAT IS REDEEMABLE FOR A TOBACCO PRODUCT**
2 **IF THE COUPON:**

3 **(I) IS CONTAINED IN A NEWSPAPER, MAGAZINE, OR ANY**
4 **OTHER TYPE OF PUBLICATION, AND THE COUPON IS INCIDENTAL TO THE**
5 **PRIMARY PURPOSE OF THE PUBLICATION; OR**

6 **(II) IS SENT THROUGH THE MAIL.**

7 **24-1703.**

8 **(A) A PERSON MAY NOT DISTRIBUTE TO A MINOR:**

9 **(1) A TOBACCO PRODUCT;**

10 **(2) CIGARETTE ROLLING PAPERS; OR**

11 **(3) A COUPON REDEEMABLE FOR A TOBACCO PRODUCT.**

12 **(B) IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE OF VIOLATING THIS**
13 **SECTION THAT THE INDIVIDUAL, IN GOOD FAITH, ACTED IN ACCORDANCE WITH**
14 **§ 24-1704 OF THIS SUBTITLE.**

15 **24-1704.**

16 **(A) THIS SECTION DOES NOT APPLY IF THE PURCHASER OR RECIPIENT**
17 **REASONABLY APPEARS TO BE AT LEAST 28 YEARS OLD.**

18 **(B) BEFORE DISTRIBUTING A TOBACCO PRODUCT, CIGARETTE ROLLING**
19 **PAPERS, OR A COUPON REDEEMABLE FOR A TOBACCO PRODUCT THE**
20 **INDIVIDUAL DISTRIBUTING THE PRODUCT SHALL EXAMINE THE PROSPECTIVE**
21 **PURCHASER'S OR RECIPIENT'S DRIVER'S LICENSE OR OTHER VALID**
22 **IDENTIFICATION ISSUED BY AN EMPLOYER, A GOVERNMENT UNIT, OR AN**
23 **INSTITUTION OF HIGHER EDUCATION TO ENSURE THAT:**

24 **(1) THE PHOTOGRAPH IN THE IDENTIFICATION REASONABLY**
25 **APPEARS TO BE THAT OF THE PROSPECTIVE PURCHASER OR RECIPIENT;**

26 **(2) THE BIRTH DATE ON THE IDENTIFICATION INDICATES THAT**
27 **THE BEARER IS AT LEAST 18 YEARS OLD; AND**

28 **(3) THERE IS NO REASONABLE INDICATION THAT THE**
29 **IDENTIFICATION HAS BEEN TAMPERED WITH, ALTERED, OR FORGED.**

1 **24-1705.**

2 **A MINOR MAY NOT:**

3 **(1) PURCHASE, POSSESS, OR USE CIGARETTE ROLLING PAPERS**
4 **OR A TOBACCO PRODUCT; OR**

5 **(2) OBTAIN OR ATTEMPT TO OBTAIN A TOBACCO PRODUCT OR**
6 **CIGARETTE ROLLING PAPERS BY USING A FORM OF IDENTIFICATION THAT:**

7 **(I) IS FALSIFIED; OR**

8 **(II) IDENTIFIES AN INDIVIDUAL OTHER THAN THE MINOR.**

9 **24-1706.**

10 **(A) A PERSON WHO VIOLATES § 24-1703 OR § 24-1704 OF THIS**
11 **SUBTITLE COMMITS A CIVIL INFRACTION AND IS SUBJECT TO A CIVIL PENALTY**
12 **OF:**

13 **(1) \$300 FOR THE FIRST VIOLATION; AND**

14 **(2) \$500 FOR ANY SUBSEQUENT VIOLATION WITHIN A 24-MONTH**
15 **PERIOD FROM THE PREVIOUS CITATION.**

16 **(B) A PERSON WHO VIOLATES § 24-1705 OF THIS SUBTITLE COMMITS A**
17 **CIVIL INFRACTION AND IS SUBJECT TO:**

18 **(1) A CIVIL PENALTY OF \$50; AND**

19 **(2) REFERRAL TO A SMOKING CESSATION PROGRAM IF**
20 **AVAILABLE THROUGH THE LOCAL HEALTH DEPARTMENT.**

21 **24-1707.**

22 **(A) A COUNTY HEALTH OFFICER, A DESIGNEE OF A COUNTY HEALTH**
23 **OFFICER, OR A LAW ENFORCEMENT OFFICER MAY ISSUE A CIVIL CITATION TO A**
24 **PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IN THE SAME**
25 **MANNER DESCRIBED UNDER ARTICLE 24, § 15-103 OF THE CODE.**

26 **(B) JUDICIAL PROCEEDINGS FOR VIOLATIONS OF THIS SUBTITLE ARE**
27 **GOVERNED BY ARTICLE 24, § 15-104 OF THE CODE.**

28

1 12-101.

2 (b) "Cigarette" means any size or shaped roll for smoking that is made of
3 tobacco or tobacco mixed with another ingredient and:

4 (1) IS wrapped in paper or in any other material except tobacco;

5 (2) IS WRAPPED IN PAPER CONTAINING TOBACCO AND, WITH THE
6 WRAPPER, WEIGHS LESS THAN 3 POUNDS PER THOUSAND CIGARETTES; OR

7 (3) (I) CONTAINS TOBACCO, IN ANY FORM, THAT IS
8 FUNCTIONAL IN THE PRODUCT; AND

9 (II) IS LIKELY TO BE OFFERED TO OR PURCHASED BY
10 CONSUMERS AS A CIGARETTE, AS DESCRIBED IN ITEMS (1) AND (2) OF THIS
11 SUBSECTION, BECAUSE OF:

12 1. APPEARANCE;

13 2. THE TYPE OF TOBACCO USED IN THE FILLER; OR

14 3. PACKAGING.

15 (c) "Other tobacco product" means:

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

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

20 SECTION 4. AND BE IT FURTHER ENACTED, That this Act does not
21 preempt any county or municipal law that regulates tobacco products.

22 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2010.