

# SENATE BILL 735

C8  
SB 708/13 – FIN

4lr2405

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By: **Senator Feldman**

Introduced and read first time: January 31, 2014

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Tobacco–Related Disease Products Research, Development, and**  
3 **Commercialization Program**

4 FOR the purpose of establishing the Tobacco–Related Disease Products Research,  
5 Development, and Commercialization Program; specifying the purpose of the  
6 Program; establishing the Tobacco–Related Disease Products Research,  
7 Development, and Commercialization Fund as a special, nonlapsing fund;  
8 specifying the purpose of the Fund; requiring the Maryland Biotechnology  
9 Center in the Department of Business and Economic Development to administer  
10 the Fund; requiring the State Treasurer to hold the Fund and the Comptroller  
11 to account for the Fund; specifying the contents of the Fund; specifying the  
12 purpose for which the Fund may be used; providing for the investment of money  
13 in and expenditures from the Fund; establishing certain criteria and certain  
14 award amounts for grants awarded under the Program; requiring certain  
15 recipients of Program funds to pay a certain royalty; authorizing the  
16 Department to adopt certain regulations; exempting the Fund from a certain  
17 provision of law requiring interest on State money in special funds to accrue to  
18 the General Fund of the State; requiring the Governor to make a certain  
19 appropriation, beginning in a certain fiscal year, from the Cigarette Restitution  
20 Fund each year under certain circumstances; defining certain terms; providing  
21 for the termination of this Act; and generally relating to the  
22 Tobacco–Related Disease Products Research, Development, and  
23 Commercialization Program.

24 BY adding to

25 Article – Economic Development

26 Section 5–1401 through 5–1406 to be under the new subtitle “Subtitle 14.  
27 Tobacco–Related Disease Products Research, Development, and  
28 Commercialization Program”

29 Annotated Code of Maryland

30 (2008 Volume and 2013 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,  
2 Article – State Finance and Procurement  
3 Section 6–226(a)(2)(ii)76. and 77. and 7–317(g)  
4 Annotated Code of Maryland  
5 (2009 Replacement Volume and 2013 Supplement)

6 BY adding to  
7 Article – State Finance and Procurement  
8 Section 6–226(a)(2)(ii)78.  
9 Annotated Code of Maryland  
10 (2009 Replacement Volume and 2013 Supplement)

11 Preamble

12 WHEREAS, The United States Surgeon General has determined that cigarette  
13 smoking causes lung cancer, heart disease, and other serious diseases and that there  
14 are hundreds of tobacco–related deaths in the United States each year; and

15 WHEREAS, Because cigarette smoking presents serious public health concerns,  
16 leading United States tobacco product manufacturers entered into a settlement  
17 agreement on November 23, 1998, entitled the “Master Settlement Agreement” with  
18 the State of Maryland; and

19 WHEREAS, The Master Settlement Agreement obligates these manufacturers  
20 to pay substantial sums to the State of Maryland, in return for a release of past,  
21 present, and certain future claims against them as described in the Agreement; and

22 WHEREAS, The Master Settlement Agreement has resulted in approximately  
23 \$1.5 billion in payments to the State of Maryland from leading United States tobacco  
24 product manufacturers; and

25 WHEREAS, The State of Maryland received approximately \$150 million in  
26 fiscal year 2012 through the Master Settlement Agreement and annual payments are  
27 anticipated for at least the next 15 years; and

28 WHEREAS, The Biotechnology Industry Organization reports that 16 states  
29 have used funds from the Master Settlement Agreement to support the biotechnology  
30 industry in those states; and

31 WHEREAS, Although the biotechnology industry is a pillar of job creation in  
32 the State, to date Maryland has not used any funds from the Master Settlement  
33 Agreement to support its biotechnology industry; and

34 WHEREAS, Small biotechnology companies have access to only approximately  
35 3% of the \$27 billion in yearly grant funding for research and development provided  
36 through the National Institutes of Health; now, therefore,

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

3 **Article – Economic Development**

4 **SUBTITLE 14. TOBACCO–RELATED DISEASE PRODUCTS RESEARCH,**  
5 **DEVELOPMENT, AND COMMERCIALIZATION PROGRAM.**

6 **5–1401.**

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

9 (B) “FUND” MEANS THE TOBACCO–RELATED DISEASE PRODUCTS  
10 RESEARCH, DEVELOPMENT, AND COMMERCIALIZATION FUND ESTABLISHED  
11 UNDER § 5–1403 OF THIS SUBTITLE.

12 (C) “PROGRAM” MEANS THE TOBACCO–RELATED DISEASE PRODUCTS  
13 RESEARCH, DEVELOPMENT, AND COMMERCIALIZATION PROGRAM  
14 ESTABLISHED UNDER § 5–1402 OF THIS SUBTITLE.

15 **5–1402.**

16 (A) THERE IS A TOBACCO–RELATED DISEASE PRODUCTS RESEARCH,  
17 DEVELOPMENT, AND COMMERCIALIZATION PROGRAM IN THE DEPARTMENT.

18 (B) THE PURPOSE OF THE PROGRAM IS TO PROMOTE THE RESEARCH,  
19 DEVELOPMENT, AND COMMERCIALIZATION OF INNOVATIVE PRODUCTS AND  
20 TECHNOLOGIES THAT ADDRESS TOBACCO–RELATED DISEASES.

21 **5–1403.**

22 (A) THERE IS A TOBACCO–RELATED DISEASE PRODUCTS RESEARCH,  
23 DEVELOPMENT, AND COMMERCIALIZATION FUND IN THE DEPARTMENT.

24 (B) THE PURPOSE OF THE FUND IS TO PROVIDE GRANT MONEY TO  
25 SUPPORT THE PURPOSES OF THE PROGRAM.

26 (C) THE MARYLAND BIOTECHNOLOGY CENTER IN THE DEPARTMENT  
27 SHALL ADMINISTER THE FUND.

28 (D) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT  
29 SUBJECT TO § 7–302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

1           **(2) THE STATE TREASURER SHALL HOLD THE FUND**  
2 **SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.**

3           **(E) THE FUND CONSISTS OF:**

4           **(1) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND,**  
5 **INCLUDING MONEY APPROPRIATED FROM THE CIGARETTE RESTITUTION FUND**  
6 **ESTABLISHED UNDER § 7-317 OF THE STATE FINANCE AND PROCUREMENT**  
7 **ARTICLE;**

8           **(2) ROYALTIES RECEIVED UNDER § 5-1405 OF THIS SUBTITLE;**

9           **(3) INVESTMENT EARNINGS OF THE FUND; AND**

10           **(4) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR**  
11 **THE BENEFIT OF THE FUND.**

12           **(F) THE FUND SHALL BE USED TO COVER THE COSTS OF THE**  
13 **PROGRAM, INCLUDING ANY GRANTS THAT ARE AWARDED TO ELIGIBLE**  
14 **RECIPIENTS.**

15           **(G) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE**  
16 **FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.**

17           **(2) ANY INVESTMENT EARNINGS OF THE FUND SHALL BE PAID**  
18 **INTO THE FUND.**

19           **(H) EXPENDITURES FROM THE FUND MAY BE MADE ONLY IN**  
20 **ACCORDANCE WITH THE STATE BUDGET.**

21 **5-1404.**

22           **(A) IN CONSULTATION WITH THE DEPARTMENT OF HEALTH AND**  
23 **MENTAL HYGIENE, THE MARYLAND BIOTECHNOLOGY CENTER IN THE**  
24 **DEPARTMENT SHALL AWARD GRANTS TO APPLICANTS FOR RESEARCH,**  
25 **DEVELOPMENT, AND COMMERCIALIZATION OF INNOVATIVE PRODUCTS AND**  
26 **TECHNOLOGIES THAT ADDRESS TOBACCO-RELATED DISEASES, INCLUDING**  
27 **THERAPEUTICS, DIAGNOSTICS, AND MEDICAL DEVICES.**

28           **(B) THE DEPARTMENT SHALL AWARD GRANTS TO APPLICANTS ON A**  
29 **COMPETITIVE BASIS, WITH PRIORITY GIVEN TO THE FOLLOWING CRITERIA:**

30           **(1) THE TECHNICAL AND SCIENTIFIC MERIT OF THE APPLICANT'S**  
31 **PROPOSAL AND ITS POTENTIAL ABILITY TO ADDRESS THE UNMET MEDICAL**

1 NEEDS OF THE CITIZENS OF MARYLAND, INCLUDING THE NEEDS OF SMOKERS,  
2 FORMER SMOKERS, AND NONSMOKERS EXPOSED TO SECONDHAND SMOKE;

3 (2) THE DEGREE OF THE ASSOCIATION BETWEEN CIGARETTE  
4 SMOKING AND THE DISEASE BEING ADDRESSED BY THE APPLICANT'S  
5 PROPOSAL;

6 (3) THE AMOUNT OF TIME THE PROPOSAL IS LIKELY TO TAKE TO  
7 RESULT IN A LATE-STAGE CLINICAL TRIAL OR A MARKETED PRODUCT, WITH  
8 PRIORITY GIVEN TO:

9 (I) IN THE CASE OF THERAPEUTICS, PROPOSALS  
10 REASONABLY LIKELY TO RESULT IN A LATE-STAGE CLINICAL TRIAL WITHIN 3  
11 YEARS FROM THE END OF THE PROJECT PERIOD; OR

12 (II) IN THE CASE OF DEVICES AND DIAGNOSTICS,  
13 PROPOSALS REASONABLY LIKELY TO RESULT IN A MARKETED PRODUCT WITHIN  
14 3 YEARS OF THE END OF THE PROJECT PERIOD;

15 (4) THE APPLICANT'S TRACK RECORD IN BRINGING PRODUCTS TO  
16 MARKET;

17 (5) THE APPLICANT'S TRACK RECORD IN LEVERAGING OTHER  
18 FUNDING SOURCES, INCLUDING PRIVATE CAPITAL; AND

19 (6) THE POTENTIAL FOR THE CREATION OF NEW JOBS IN THE  
20 STATE THAT CAN BE SUSTAINED WITHOUT CONTINUED STATE FUNDING,  
21 INCLUDING MANUFACTURING JOBS.

22 (C) AN APPLICANT MAY NOT RECEIVE MORE THAN ONE GRANT AWARD  
23 PER FISCAL YEAR.

24 (D) GRANT AWARDS SHALL BE IN THE FOLLOWING AMOUNTS:

25 (1) \$200,000 FOR A SINGLE COMPANY; OR

26 (2) \$300,000 FOR A COMPANY COLLABORATING WITH A  
27 NONPROFIT MEDICAL RESEARCH INSTITUTE OR CARE FACILITY IN THE STATE.

28 5-1405.

29 (A) (1) PROGRAM RECIPIENTS WHO DEVELOP OR IMPROVE A  
30 PRODUCT OR SERVICE WITH MONEY FROM THE FUND THAT RESULTS IN A

1 MARKETED PRODUCT OR SERVICE SHALL PAY THE STATE A ROYALTY OF 3% OF  
2 NET SALES OF THE PRODUCT OR SERVICE.

3 (2) THE TOTAL AMOUNT OF A ROYALTY PAID BY A PROGRAM  
4 RECIPIENT UNDER THIS SECTION MAY NOT BE MORE THAN 300% OF THE  
5 AMOUNT OF THE GRANT RECEIVED UNDER THE PROGRAM.

6 (B) ROYALTIES RECEIVED UNDER THIS SECTION SHALL BE DEPOSITED  
7 IN THE FUND AND USED TO PROVIDE FUTURE AWARDS UNDER THE PROGRAM.

8 5-1406.

9 THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THE  
10 PROVISIONS OF THIS SECTION.

11 Article – State Finance and Procurement

12 6-226.

13 (a) (2) (ii) The provisions of subparagraph (i) of this paragraph do not  
14 apply to the following funds:

15 76. the Baltimore City Public School Construction  
16 Financing Fund; [and]

17 77. the Spay/Neuter Fund; AND

18 78. TOBACCO-RELATED DISEASE PRODUCTS  
19 RESEARCH, DEVELOPMENT, AND COMMERCIALIZATION FUND.

20 7-317.

21 (g) (1) Amounts may only be expended from the Fund through  
22 appropriations in the State budget bill as provided in this subsection.

23 (2) The Governor shall include in the annual budget bill  
24 appropriations from the Fund equivalent to the lesser of \$100,000,000 or 90% of the  
25 funds estimated to be available to the Fund in the fiscal year for which the  
26 appropriations are made.

27 (3) For each fiscal year for which appropriations are made, at least  
28 50% of the appropriations shall be made for those purposes enumerated in subsection  
29 (f)(1)(i), (ii), and (iii)1 through 9 of this section subject to the requirement of subsection  
30 (e)(2) of this section.

1                   (4)   **(I)**   For each fiscal year for which appropriations are made, at  
2 least 30% of the appropriations shall be made for the purposes of the Maryland  
3 Medical Assistance Program.

4                   **(II) FROM THE APPROPRIATIONS MADE UNDER**  
5 **SUBPARAGRAPH (I) OF THIS PARAGRAPH, BEGINNING IN FISCAL YEAR 2016,**  
6 **\$1,000,000 SHALL BE APPROPRIATED TO THE TOBACCO-RELATED DISEASE**  
7 **PRODUCTS RESEARCH, DEVELOPMENT, AND COMMERCIALIZATION FUND**  
8 **ESTABLISHED UNDER § 5-1403 OF THE ECONOMIC DEVELOPMENT ARTICLE.**

9                   (5)   For each fiscal year for which appropriations are made, 0.15% of  
10 the Fund shall be appropriated for the purposes of enforcement of Title 16, Subtitle 5  
11 of the Business Regulation Article.

12                   (6)   Any additional appropriations, not subject to paragraph (3),  
13 paragraph (4), or paragraph (5) of this subsection, may be made for any lawful  
14 purpose.

15                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 July 1, 2014. It shall remain effective for a period of 5 years and, at the end of June 30,  
17 2019, with no further action required by the General Assembly, this Act shall be  
18 abrogated and of no further force and effect.