

HOUSE BILL 1253

A1, C2

2lr2268

By: **Delegate Wilson**

Introduced and read first time: February 11, 2022

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Alcohol and Tobacco Commission – Clarifications**

3 FOR the purpose of updating certain statutory references to the authority of the Alcohol
4 and Tobacco Commission and its Executive Director; clarifying certain authority of
5 the Commission and the Executive Director to regulate and enforce certain matters
6 relating to certain products and the tobacco tax; authorizing the Executive Director
7 to enter into certain memoranda of understanding and agreements; and generally
8 relating to the Alcohol and Tobacco Commission.

9 BY repealing and reenacting, with amendments,
10 Article – Alcoholic Beverages
11 Section 1–201(a)(1), 1–304, 1–311, 1–317(a), and 1–321
12 Annotated Code of Maryland
13 (2016 Volume and 2021 Supplement)

14 BY repealing and reenacting, without amendments,
15 Article – Alcoholic Beverages
16 Section 1–314 and 1–315
17 Annotated Code of Maryland
18 (2016 Volume and 2021 Supplement)

19 BY repealing and reenacting, without amendments,
20 Article – Business Regulation
21 Section 16–101(a) and (d)
22 Annotated Code of Maryland
23 (2015 Replacement Volume and 2021 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article – Business Regulation
26 Section 16–208(c)(1), 16–501, 16–506(b) and (d), 16–507, 16–508(b), 16–601,
27 16–602(a), (c), (g), (i), and (k), 16–602.1(c), 16–603(a) and (c), 16–604(d),

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



16–605(c), 16–607, and 16–609
Annotated Code of Maryland
(2015 Replacement Volume and 2021 Supplement)

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

Article – Alcoholic Beverages

1–201.

(a) (1) (i) To obtain respect and obedience to law and to foster and promote
temperance, it is the policy of the State to regulate and control:

1. the manufacture, sale, distribution, transportation, and
storage of alcoholic beverages in the State; and

2. the transportation and distribution of alcoholic beverages
into and out of the State.

(ii) To carry out this policy in the best public interest, it is the intent
of the General Assembly that the [Comptroller] **COMMISSION, EXECUTIVE DIRECTOR**,
local licensing boards, liquor control boards, enforcement officers, and judges of the courts
of the State be empowered to administer and enforce this article.

1–304.

(a) A member of the Commission may not:

(1) have a direct or indirect financial interest, ownership, or management,
including holding any stocks, bonds, or other similar financial interests, in the alcohol or
tobacco industries;

(2) have an official relationship to a person who holds a license or permit
under this article or Title 16, Title 16.5, [or] Title 16.7, **OR TITLE 16.9** of the Business
Regulation Article;

(3) be an elected official;

(4) receive or share in, directly or indirectly, the receipts or proceeds of any
activities conducted in the alcohol or tobacco industries;

(5) have a beneficial interest in any contract for the manufacture or sale of
any device or product or the provision of any independent consulting services in connection
with a holder of a license or permit issued under this article or Title 16, Title 16.5, [or] Title
16.7, **OR TITLE 16.9** of the Business Regulation Article; or

(6) accept a contribution of money or property worth at least \$100 from an entity or individual associated with the alcohol or tobacco industries with respect to the regulation of alcohol or tobacco.

(b) A member of the Commission shall file a financial disclosure statement with the State Ethics Commission in accordance with Title 5, Subtitle 6 of the General Provisions Article.

1–311.

(a) The Executive Director shall adopt regulations to discharge the duties under:

(1) this article; and

(2) Titles 16, 16.5, [and] 16.7, **AND 16.9** of the Business Regulation Article.

(b) The Executive Director may adopt regulations regarding:

(1) labeling and advertising similar to the regulations adopted by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury;

(2) nature, form, and capacity of containers;

(3) credit sales;

(4) records to be kept by license holders and others engaged in the business;

(5) the amount of deposit on returnable beer containers that manufacturers and wholesalers of beer charge and collect; and

(6) any other subject the Executive Director considers necessary for the proper administration of the duties of the Executive Director under this article, Title 16, Title 16.5, [or] Title 16.7, **OR TITLE 16.9** of the Business Regulation Article, or the provisions of the Tax – General Article relating to the alcoholic beverage tax **OR THE TOBACCO TAX**.

(c) (1) Any violation of a regulation adopted by the Executive Director under this article, Title 16, Title 16.5, [or] Title 16.7, **OR TITLE 16.9** of the Business Regulation Article, or the provisions of the Tax – General Article relating to the alcoholic beverage tax **OR THE TOBACCO TAX** is grounds to revoke or suspend a license.

(2) The violator is subject to the penalties provided under § 6–402(a) of this article.

1–314.

The Executive Director may delegate authority under this article, provisions of the Tax – General Article relating to alcoholic beverages and tobacco, and provisions of the Business Regulation Article relating to tobacco to the Division director to issue or refuse to issue licenses and permits.

1–315.

(a) Except as provided in subsection (b) of this section, the Executive Director may delegate authority to conduct hearings on violations of this article or of any regulations adopted under this article, the provisions of the Tax – General Article relating to alcoholic beverages or tobacco, or the provisions of the Business Regulation Article relating to tobacco to the Division director or any other employee of the Executive Director’s office.

(b) The Division director or any other employee of the Executive Director’s office delegated authority to conduct hearings under subsection (a) of this section:

(1) may not impose a penalty provided for under this article or a provision of the Tax – General Article relating to alcoholic beverages; and

(2) shall report the findings and recommendations to the Executive Director to take the action that the Executive Director considers appropriate.

1–317.

(a) The Executive Director shall:

(1) maintain a record of:

(i) each license issued or approved under this article and Titles 16, 16.5, [and] 16.7, **AND 16.9** of the Business Regulation Article; and

(ii) any revocation, suspension, or cancellation of a license and any restriction imposed on a license with a brief explanation of the reason for the action; and

(2) allow any person to inspect the records at the Office of the Executive Director during regular business hours.

1–321.

(a) In order to increase efficiency and accuracy in the performance of their respective duties and responsibilities under this article and other laws relating to alcohol and tobacco, the Commission and the Comptroller shall:

(1) cooperate and share information and personnel in investigations of licensed premises and other locations and materials relating to the enforcement of the alcohol and tobacco laws of the State;

(2) cooperate and share information and personnel in other matters relating to the manufacture, processing, importation, taxation, sale, and service of alcohol and tobacco in the State; and

(3) enter into a memorandum of understanding for cooperative activities in inspections and other enforcement activities relating to the alcohol and tobacco laws of the State.

(b) (1) The Commission may enter into memoranda of understanding and other cooperative arrangements with federal, State, and local governmental units in carrying out this article and other alcohol and tobacco laws of the State in the interest of reducing duplication of efforts and reducing the overall costs of administration of inspection and enforcement programs to the State.

(2) THE EXECUTIVE DIRECTOR MAY ALSO ENTER INTO MEMORANDA OF UNDERSTANDING AND OTHER COOPERATIVE ARRANGEMENTS WITH FEDERAL, STATE, AND LOCAL GOVERNMENTAL UNITS TO ADDRESS OPERATIONAL MATTERS AND EFFICIENCIES IN CARRYING OUT THIS ARTICLE AND OTHER ALCOHOL AND TOBACCO LAWS OF THE STATE.

Article – Business Regulation

16–101.

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

(d) “Executive Director” means the Executive Director of the Alcohol and Tobacco Commission.

16–208.

(c) (1) If a licensed subwholesaler or licensed wholesaler surrenders the license to the [Comptroller] **EXECUTIVE DIRECTOR** and if no disciplinary proceedings are pending against the licensee, the Executive Director shall refund a pro rata part of the license fee for the unexpired term of the license.

16–501.

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

(b) (1) “Brand family” means all styles of cigarettes sold under the same trademark, regardless of whether the cigarettes are differentiated from one another by means of additional modifiers or descriptors such as “menthol”, “lights”, “kings”, “100s”, or other differentiation.

(2) “Brand family” includes any use of a brand name (alone or in conjunction with any other word) trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(c) “Cigarette” has the meaning stated in § 16–402(e) of this title (the Escrow Act).

(d) “Comptroller” means the Comptroller of the State or any authorized agent of the Comptroller who is responsible for collection of the excise tax on cigarettes.

(e) “Escrow Act” means Subtitle 4 of this title.

(f) **“EXECUTIVE DIRECTOR” INCLUDES AN AGENT OR EMPLOYEE OF THE ALCOHOL AND TOBACCO COMMISSION RESPONSIBLE FOR THE ENFORCEMENT OF STATE TOBACCO LAWS AND REGULATIONS.**

(G) “Licensed wholesaler” means a wholesaler who is licensed under Subtitle 2 of this title to act as a wholesaler and any person who is an authorized agent of the licensed wholesaler for the stamping and distribution of cigarettes.

[(g)] (H) “Master Settlement Agreement” has the meaning stated in § 16–402(f) of this title (the Escrow Act).

[(h)] (I) “Nonparticipating manufacturer” means any tobacco product manufacturer that is not a participating manufacturer.

[(i)] (J) “Participating manufacturer” has the meaning stated in section II(jj) of the Master Settlement Agreement and all amendments to the Agreement.

[(j)] (K) “Qualified escrow fund” has the meaning stated in § 16–402(g) of this title (the Escrow Act).

[(k)] (L) “Tobacco product manufacturer” has the meaning stated in § 16–402(j) of this title (the Escrow Act).

[(l)] (M) “Units sold” has the meaning stated in § 16–402(k) of this title (the Escrow Act).

16–506.

(b) (1) The Comptroller may disclose to the Attorney General **AND THE EXECUTIVE DIRECTOR** any information received under this subtitle and requested by the Attorney General **OR THE EXECUTIVE DIRECTOR** for purposes of determining compliance with and enforcement of the provisions of this subtitle.

(2) The Comptroller [and], the Attorney General, **AND THE EXECUTIVE DIRECTOR** shall share with each other the information received under this subtitle and may share the information with other federal, State, or local agencies only for purposes of enforcement of this subtitle, the Escrow Act, or corresponding laws of other states.

(d) In addition to any other information required to be submitted by law, the Comptroller [or], the Attorney General, **OR THE EXECUTIVE DIRECTOR** may require a licensed wholesaler or tobacco product manufacturer to submit any additional information, including samples of the packaging or labeling of each brand family, as is necessary to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this subtitle.

16–507.

(a) (1) In addition to or instead of any other civil or criminal remedy provided by law, on a determination that a licensed wholesaler has violated § 16–504(c) or § 16–506(a) of this subtitle or any regulation adopted under this subtitle, the [Comptroller] **EXECUTIVE DIRECTOR** may revoke or suspend the license of any licensed wholesaler in the manner provided under §§ 16–211 and 16–212 of this title.

(2) Each stamp affixed and each offer to sell cigarettes in violation of § 16–504(c) of this subtitle shall constitute a separate violation.

(3) The [Comptroller] **EXECUTIVE DIRECTOR** may also impose a civil penalty in an amount not to exceed the greater of 500% of the retail value of the cigarettes sold or \$5,000 on a determination of violation of § 16–504(c) of this subtitle or any regulations adopted under that section.

(b) (1) Any cigarettes that have been sold, offered for sale or possessed for sale in this State, or imported for personal consumption in this State in violation of § 16–504(c) of this subtitle shall be deemed contraband under §§ 13–836, 13–837, and 13–839 of the Tax – General Article, and those cigarettes shall be subject to seizure and forfeiture as provided in those sections.

(2) All cigarettes seized and forfeited may not be resold and shall be destroyed.

(c) (1) The Attorney General, on behalf of the Comptroller **OR THE EXECUTIVE DIRECTOR**, may seek an injunction to restrain a threatened or actual violation of § 16–504(c), § 16–506(a), or § 16–506(d) of this subtitle by a licensed wholesaler and compel the licensed wholesaler to comply with those sections.

(2) In any action brought under this section, the State shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney’s fees.

(d) A person who sells, distributes, acquires, holds, owns, possesses, transports,

imports, or causes to be imported, cigarettes that the person knows or should know are intended for distribution or sale in the State in violation of § 16–504(c) of this subtitle is guilty of a misdemeanor, and on conviction is subject to a fine not exceeding \$5,000 or imprisonment not exceeding 1 year or both.

16–508.

(b) The Attorney General [and], the Comptroller, **AND THE EXECUTIVE DIRECTOR** may adopt regulations [necessary] to [effectuate the purposes of] **CARRY OUT** this subtitle.

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.

[(e)] **(D)** “Manufacturer” has the meaning stated in § 16–201 of this title.

[(f)] **(E)** “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.

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

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

[(i)] **(H)** (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.

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

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

[(l)] (K) “Wholesaler” has the meaning stated in § 16–201 of this title.
16–602.

(a) 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] EXECUTIVE DIRECTOR** in accordance with § 16–603 of this subtitle.

(c) (1) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials (ASTM) standard E2187–04 “Standard Test Method for Measuring the Ignition Strength of Cigarettes”.

(2) The **[Comptroller] EXECUTIVE DIRECTOR**, in consultation with the **STATE FIRE PREVENTION** Commission, may adopt a subsequent ASTM standard test method for measuring the ignition strength of cigarettes on a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM standard E2187–04 and the performance standard of this section.

(g) (1) Each laboratory that conducts tests in accordance with this section shall:

(i) have current accreditation pursuant to Standard ISO/IEC 17025 of the International Organization for Standardization, subsequent laboratory standardization, or another comparable accreditation as determined by the **[Comptroller] EXECUTIVE DIRECTOR**; and

(ii) implement a quality control and quality assurance program that includes a procedure to determine the repeatability of the testing results.

(2) The repeatability value shall be no greater than 0.19.

(i) (1) If the [Comptroller] **EXECUTIVE DIRECTOR** determines that a cigarette cannot be tested in accordance with the test method required by this section, the manufacturer of the cigarette shall propose to the [Comptroller] **EXECUTIVE DIRECTOR** a test method and performance standard for that cigarette.

(2) The [Comptroller] **EXECUTIVE DIRECTOR**, in consultation with the **STATE FIRE PREVENTION** Commission, may approve a test method and performance standard that the [Comptroller] **EXECUTIVE DIRECTOR** determines is equivalent to the requirements of this section, and the manufacturer may use that test method and performance standard for certification of a cigarette in accordance with § 16–603 of this subtitle.

(3) (i) The [Comptroller] **EXECUTIVE DIRECTOR**, in consultation with the **STATE FIRE PREVENTION** Commission, shall approve a test method and performance standard used in another state if the [Comptroller] **EXECUTIVE DIRECTOR** determines that:

1. the other state has enacted a reduced cigarette ignition propensity standard that includes a test method and performance standard that are the same as the requirements of this section; and

2. the officials responsible for implementing the requirements in the other state have approved of the alternative test method and performance standard for a particular cigarette under a legal provision comparable to this section.

(ii) A manufacturer may use a test method and performance standard approved under subparagraph (i) of this paragraph for certification in accordance with § 16–603 of this subtitle of the cigarette used in the approved test method.

(k) (1) Each manufacturer shall retain copies of the reports of all tests conducted on all cigarettes offered for sale for 3 years.

(2) (i) On request, the manufacturer shall provide the data retained under paragraph (1) of this subsection to the [Comptroller] **EXECUTIVE DIRECTOR**, the **STATE FIRE PREVENTION** Commission, or the Attorney General within 60 days after receiving the request, for the purpose of ensuring compliance with this section.

(ii) A manufacturer who does not provide the data within 60 days of a request is subject to a civil penalty not to exceed \$10,000 for each day after the 60th day that the violation continues.

16–602.1.

1 (c) (1) (i) The manufacturer may submit to the [Comptroller] **EXECUTIVE**
2 **DIRECTOR**, as “confidential under seal”, descriptors for each cigarette sold or distributed
3 for the purpose of consumer testing under subsection (b)(1) of this section.

4 (ii) Descriptors shall include brand, style, length, circumference,
5 flavor, and package.

6 (2) Notwithstanding any other provision of law, the information submitted
7 in accordance with paragraph (1) of this subsection:

8 (i) is not subject to disclosure under State law or discovery in civil
9 litigation; and

10 (ii) may be used by the [Comptroller] **EXECUTIVE DIRECTOR** or
11 the Attorney General for the purpose of enforcing the provisions of this title.

12 16–603.

13 (a) (1) Each manufacturer shall submit to the [Comptroller] **EXECUTIVE**
14 **DIRECTOR** written certification attesting that each cigarette has been tested in accordance
15 with and has met the performance standard required under § 16–602 of this subtitle.

16 (2) A certification under paragraph (1) of this subsection may not list more
17 than 50 cigarettes.

18 (c) The certification shall be made available to:

19 (1) the Attorney General and the **STATE FIRE PREVENTION** Commission
20 for purposes consistent with this subtitle; and

21 (2) the [Comptroller] **EXECUTIVE DIRECTOR** for the purpose of ensuring
22 compliance with this section.

23 16–604.

24 (d) (1) A manufacturer shall request approval of a proposed marking from the
25 [Comptroller] **EXECUTIVE DIRECTOR**.

26 (2) (i) The [Comptroller] **EXECUTIVE DIRECTOR** shall approve a
27 marking specified in subsection (b)(1) of this section.

28 (ii) A marking is deemed approved if the [Comptroller] **EXECUTIVE**
29 **DIRECTOR** fails to act within 10 business days after receiving a request for approval.

30 (3) A manufacturer may not use a modified marking unless the

modification has been approved in accordance with this section.

(4) A manufacturer shall use only one marking on all brands that the manufacturer markets.

(5) A marking or modified marking approved by the [Comptroller] **EXECUTIVE DIRECTOR** shall be applied uniformly on all brands marketed and on all packages, including packs, cartons, and cases marketed by that manufacturer.

16–605.

(c) Each retailer, subwholesaler, vending machine operator, and wholesaler shall allow the [Comptroller] **EXECUTIVE DIRECTOR** or designee of the [Comptroller] **EXECUTIVE DIRECTOR** to inspect the markings on cigarette packaging at any time.

16–607.

The [Comptroller] **EXECUTIVE DIRECTOR**:

(1) may adopt regulations necessary to carry out and administer this subtitle;

(2) in consultation with the **STATE FIRE PREVENTION** Commission, may adopt regulations for the conduct of random inspections of retailers, subwholesalers, vending machine operators, and wholesalers to ensure compliance with this subtitle; and

(3) may establish a \$250 fee for each certification required under § 16–603 of this subtitle to cover the expenses of administering this subtitle.

16–609.

(a) To enforce this subtitle:

(1) the Attorney General may bring an action to enjoin any acts in violation of this subtitle and to recover civil penalties authorized under § 16–608 of this subtitle; or

(2) the Attorney General or the [Comptroller] **EXECUTIVE DIRECTOR** may examine the books, papers, invoices, and records of a person in possession, control, or occupancy of a building, structure, or land where cigarettes are placed, stored, sold, or offered for sale.

(b) Money collected from civil penalties recovered under this section shall be distributed to the Senator William H. Amoss Fire, Rescue, and Ambulance Fund.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2022.