

SENATE BILL 632

E1, C2

2lr2432

By: **Senators Montgomery, Forehand, Jones–Rodwell, Manno, and McFadden**
Introduced and read first time: February 3, 2012
Assigned to: Finance and Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Flavored Cigars – Prohibition on Sale**

3 FOR the purpose of prohibiting a person from selling or distributing or offering to sell
4 or distribute a flavored cigar; establishing penalties for a violation of this Act;
5 authorizing the Comptroller to deny a license to a certain applicant, reprimand
6 a certain licensee, or suspend or revoke a certain license if the applicant or
7 licensee sells or distributes cigars in violation of a certain provision of this Act;
8 providing that certain provisions of law do not preempt a county or municipal
9 government from enacting and enforcing certain measures; providing for the
10 application of certain provisions of this Act; providing that certain cigars may
11 continue to be sold until a certain date; defining certain terms; and generally
12 relating to the sale and distribution of flavored cigars.

13 BY repealing and reenacting, with amendments,
14 Article – Business Regulation
15 Section 16–210
16 Annotated Code of Maryland
17 (2010 Replacement Volume and 2011 Supplement)

18 BY repealing and reenacting, without amendments,
19 Article – Business Regulation
20 Section 16–402(e) and 16.5–101(p)
21 Annotated Code of Maryland
22 (2010 Replacement Volume and 2011 Supplement)

23 BY adding to
24 Article – Criminal Law
25 Section 10–106.1
26 Annotated Code of Maryland
27 (2002 Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Business Regulation**

4 16–210.

5 (a) Subject to the hearing provisions of § 16–211 of this subtitle, the
6 Comptroller may deny a license to an applicant, reprimand a licensee, or suspend or
7 revoke a license if the applicant or licensee:

8 (1) fraudulently or deceptively obtains or attempts to obtain a license
9 for the applicant or licensee or for another person;

10 (2) fraudulently or deceptively uses a license;

11 (3) fails to comply with the Maryland Cigarette Sales Below Cost Act
12 or regulations adopted under that Act;

13 (4) fails to comply with the provisions of Title 11, Subtitle 5A of the
14 Commercial Law Article;

15 (5) buys cigarettes for resale:

16 (i) in violation of a license; or

17 (ii) from a person who is not a licensed cigarette manufacturer,
18 licensed subwholesaler, licensed vending machine operator, or licensed wholesaler;

19 (6) is convicted, under the laws of the United States or of any other
20 state, of:

21 (i) a felony; or

22 (ii) a misdemeanor that is a crime of moral turpitude and is
23 directly related to the fitness and qualification of the applicant or licensee; [or]

24 (7) has not paid a tax due before October 1 of the year after the tax
25 became due; OR

26 **(8) SELLS OR DISTRIBUTES CIGARS IN VIOLATION OF § 10–106.1**
27 **OF THE CRIMINAL LAW ARTICLE.**

28 (b) Subject to the hearing provisions of § 16–211 of this subtitle, the
29 Comptroller may suspend or revoke a license if the licensee violates:

1 (1) Title 12 of the Tax – General Article, or regulations adopted under
2 that title; or

3 (2) this title or regulations adopted under this title.

4 (c) Subject to the hearing provisions of § 16–211 of this subtitle, the
5 Comptroller shall deny a license to any applicant who has had a license revoked under
6 this section until:

7 (1) 1 year has passed since the license was revoked; and

8 (2) it satisfactorily appears to the Comptroller that the applicant will
9 comply with this title and any regulations adopted under this title.

10 (d) Prior to the issuance or renewal of any license, the Comptroller shall
11 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 16–402.

16 (e) (1) “Cigarette” means any product that contains nicotine, is intended
17 to be burned or heated under ordinary conditions of use, and consists of or contains:

18 (i) any roll of tobacco wrapped in paper or in any substance not
19 containing tobacco;

20 (ii) tobacco, in any form, that is functional in the product,
21 which, because of its appearance, the type of tobacco used in the filler, or its packaging
22 and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

23 (iii) any roll of tobacco wrapped in any substance containing
24 tobacco which, because of its appearance, the type of tobacco used in the filler, or its
25 packaging and labeling, is likely to be offered to, or purchased by, consumers as a
26 cigarette described in item (i) of this paragraph.

27 (2) “Cigarette” includes “roll-your-own” tobacco (i.e., any tobacco
28 which, because of its appearance, type, packaging, or labeling is suitable for use and
29 likely to be offered to or purchased by consumers as tobacco for making cigarettes). For
30 purposes of this definition of “cigarette”, 0.09 ounces of “roll-your-own” tobacco shall
31 constitute one individual “cigarette”.

32 16.5–101.

1 (p) “Premium cigars” means cigars that:

2 (1) have hand-rolled wrappers made from whole tobacco leaves where
3 the filler, binder, and wrapper are made of all tobacco, and may include adhesives or
4 other materials used to maintain size, texture, or flavor; or

5 (2) are designated as premium cigars by the Comptroller by
6 regulation.

7 **Article – Criminal Law**

8 **10-106.1.**

9 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
10 MEANINGS INDICATED.

11 (2) “CHARACTERIZING FLAVOR” MEANS A DISTINGUISHABLE
12 FLAVOR, TASTE, OR AROMA OTHER THAN TOBACCO THAT IS IMPARTED TO THE
13 TOBACCO, TOBACCO SMOKE, OR VAPOR OF A CIGAR PRIOR TO OR DURING
14 CONSUMPTION.

15 (3) “CIGAR” MEANS A ROLL FOR SMOKING MADE IN WHOLE OR IN
16 PART OF TOBACCO.

17 (4) “COMPONENT PART” INCLUDES THE TOBACCO, FILTER,
18 PAPER, AND ANY OTHER IDENTIFIABLE ELEMENT IN A CIGAR.

19 (5) (I) “CONSTITUENT” MEANS ANY INGREDIENT, SUBSTANCE,
20 CHEMICAL, OR COMPOUND, OTHER THAN TOBACCO, WATER, OR
21 RECONSTITUTED TOBACCO SHEET, THAT IS ADDED BY THE MANUFACTURER TO
22 THE TOBACCO, PAPER, FILTER, OR ANY OTHER COMPONENT PART OF A CIGAR
23 DURING THE PROCESSING, MANUFACTURE, OR PACKAGING OF THE CIGAR.

24 (II) “CONSTITUENT” INCLUDES A SMOKE OR VAPOR
25 CONSTITUENT.

26 (6) (I) “FLAVOR, TASTE, OR AROMA” INCLUDES A FLAVOR, A
27 TASTE, OR AN AROMA RELATING TO ANY FRUIT, CHOCOLATE, VANILLA, HONEY,
28 CANDY, COCOA, DESSERT, COFFEE, ALCOHOLIC BEVERAGE, HERB, OR SPICE.

29 (II) “FLAVOR, TASTE, OR AROMA” DOES NOT INCLUDE A
30 FLAVOR, A TASTE, OR AN AROMA RELATING TO MENTHOL, MINT, OR
31 WINTERGREEN.

1 **(7) (I) “FLAVORED CIGAR” MEANS ANY CIGAR OR COMPONENT**
2 **PART OF A CIGAR THAT CONTAINS A CONSTITUENT OR COMPONENT PART THAT**
3 **IMPARTS A CHARACTERIZING FLAVOR, TASTE, OR AROMA TO THE TOBACCO OR**
4 **THE SMOKE OF THE CIGAR.**

5 **(II) “FLAVORED CIGAR” INCLUDES A CIGAR THAT IS**
6 **ADVERTISED, LABELED, PACKAGED, OR PROMOTED TO DISTINGUISH THE**
7 **FLAVOR, TASTE, OR AROMA OF THAT CIGAR FROM OTHER TOBACCO PRODUCTS**
8 **OF THE SAME TYPE OTHER THAN BY DISTINGUISHING PHYSICAL**
9 **CHARACTERISTICS OF THE CIGAR.**

10 **(8) “PREMIUM CIGAR” HAS THE MEANING STATED IN § 16.5–101**
11 **OF THE BUSINESS REGULATION ARTICLE.**

12 **(B) THIS SECTION DOES NOT APPLY TO:**

13 **(1) A CIGARETTE, AS DEFINED IN § 16–402 OF THE BUSINESS**
14 **REGULATION ARTICLE; OR**

15 **(2) A PREMIUM CIGAR THAT:**

16 **(I) SELLS AT RETAIL FOR AT LEAST \$2; AND**

17 **(II) IS SOLD BY A RETAIL TOBACCO BUSINESS IN WHICH THE**
18 **PRIMARY ACTIVITY IS THE SALE OF TOBACCO PRODUCTS AND ACCESSORIES AND**
19 **THE SALE OF OTHER PRODUCTS IS INCIDENTAL.**

20 **(C) A PERSON MAY NOT SELL OR DISTRIBUTE OR OFFER TO SELL OR**
21 **DISTRIBUTE A FLAVORED CIGAR.**

22 **(D) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A**
23 **MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF \$500.**

24 **(E) THIS SECTION MAY NOT BE CONSTRUED TO PREEMPT A COUNTY OR**
25 **MUNICIPAL GOVERNMENT FROM ENACTING AND ENFORCING MORE STRINGENT**
26 **MEASURES RESTRICTING THE SALE OF FLAVORED CIGARS.**

27 SECTION 2. AND BE IT FURTHER ENACTED, That, notwithstanding any
28 other provision of this Act, cigars for which the tobacco tax has been paid on or before
29 June 30, 2012, may continue to be sold until December 31, 2012.

30 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 July 1, 2012.