

# SENATE BILL 740

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6lr0902  
CF HB 881

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By: **Senator Muse**

Introduced and read first time: February 5, 2016

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Business Regulation – Marketing Synthetic Drugs – Penalties**

3 FOR the purpose of prohibiting a person that holds a certain license from possessing,  
4 providing, distributing, displaying, selling, or marketing a certain synthetic drug  
5 with the intent that it be used as a recreational drug; providing certain factors to be  
6 treated as indicia that a product is a certain synthetic drug; providing that certain  
7 proof is prima facie evidence of a violation of this Act; requiring that a certain person  
8 must permit the Comptroller to inspect certain records and products; authorizing the  
9 Comptroller to suspend or revoke a certain license under certain circumstances;  
10 requiring the Comptroller to give a certain person an opportunity for a certain  
11 hearing under certain circumstances; authorizing the Comptroller to make a certain  
12 order or seize certain products in certain circumstances; providing that certain seized  
13 property shall be deemed contraband of law; providing for the vesting of certain  
14 seized property; providing for the forfeiture of certain property; providing that the  
15 requirements of this Act are in addition to and do not exempt a certain person from  
16 certain obligations; establishing penalties for a violation of this Act; defining a  
17 certain term; and generally relating to marketing synthetic drugs.

18 BY adding to

19 Article – Business Regulation

20 Section 17–20B–01 through 17–20B–06 to be under the new subtitle “Subtitle 20B.  
21 Marketing Synthetic Drugs”

22 Annotated Code of Maryland

23 (2015 Replacement Volume and 2015 Supplement)

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

26 **Article – Business Regulation**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



**SUBTITLE 20B. MARKETING SYNTHETIC DRUGS.****17-20B-01.**

(A) IN THIS SUBTITLE, “SYNTHETIC DRUG” MEANS A PRODUCT POSSESSED, PROVIDED, DISTRIBUTED, DISPLAYED, SOLD, OR MARKETED WITH THE INTENT THAT IT BE USED AS A RECREATIONAL DRUG, SUCH THAT ITS CONSUMPTION OR INGESTION IS INTENDED TO PRODUCE EFFECTS ON THE CENTRAL NERVOUS SYSTEM OR BRAIN FUNCTION TO CHANGE PERCEPTION, MOOD, CONSCIOUSNESS, COGNITION, OR BEHAVIOR IN WAYS THAT ARE SIMILAR TO THE EFFECTS OF MARIJUANA, COCAINE, AMPHETAMINES, OR OTHER CONTROLLED DANGEROUS SUBSTANCES LISTED ON SCHEDULE I OF TITLE 5, SUBTITLE 4 OF THE CRIMINAL LAW ARTICLE.

(B) “SYNTHETIC DRUG” INCLUDES ANY CHEMICALLY SYNTHESIZED PRODUCT INCLUDING PRODUCTS THAT CONTAIN BOTH A CHEMICALLY SYNTHESIZED INGREDIENT AND HERBAL OR PLANT MATERIAL.

**17-20B-02.**

(A) A PERSON THAT HOLDS A LICENSE UNDER THIS TITLE MAY NOT POSSESS, PROVIDE, DISTRIBUTE, DISPLAY, SELL, OR MARKET A SYNTHETIC DRUG WITH THE INTENT THAT IT BE USED AS A RECREATIONAL DRUG.

(B) THE FOLLOWING FACTORS SHALL BE TREATED AS INDICIA THAT A PRODUCT IS A SYNTHETIC DRUG BEING POSSESSED, PROVIDED, DISTRIBUTED, DISPLAYED, SOLD, OR MARKETED WITH THE INTENT THAT IT BE USED AS A RECREATIONAL DRUG:

(1) THE PRODUCT IS NOT SUITABLE FOR ITS MARKETED USE (SUCH AS A CRYSTALLINE OR POWDER PRODUCT BEING MARKETED AS “GLASS CLEANER”);

(2) THE INDIVIDUAL OR BUSINESS PROVIDING, DISTRIBUTING, DISPLAYING, SELLING, OR MARKETING THE PRODUCT DOES NOT TYPICALLY PROVIDE, DISTRIBUTE, OR SELL PRODUCTS THAT ARE USED FOR THAT PRODUCT’S MARKETED USE (SUCH AS A LIQUOR STORE, SMOKE SHOP, GAS STATION, OR CONVENIENCE STORE SELLING “PLANT FOOD”);

(3) THE PRODUCT CONTAINS A WARNING LABEL THAT IS NOT TYPICALLY PRESENT ON PRODUCTS THAT ARE USED FOR THAT PRODUCT’S MARKETED USE, INCLUDING “NOT FOR HUMAN CONSUMPTION”, “NOT FOR PURCHASE BY MINORS”, “MUST BE 18 YEARS OR OLDER TO PURCHASE”, “100% LEGAL BLEND”, OR SIMILAR STATEMENTS;

1           (4) THE PRODUCT IS SIGNIFICANTLY MORE EXPENSIVE THAN  
2 PRODUCTS THAT ARE USED FOR THAT PRODUCT'S MARKETED USE;

3           (5) THE PRODUCT RESEMBLES A CONTROLLED DANGEROUS  
4 SUBSTANCE; OR

5           (6) THE LICENSEE OR ANY EMPLOYEE OF THE LICENSEE HAS BEEN  
6 WARNED BY A STATE OR LOCAL GOVERNMENT AGENCY OR HAS RECEIVED A  
7 CRIMINAL INCIDENT REPORT, ARREST REPORT, OR EQUIVALENT FROM A LAW  
8 ENFORCEMENT AGENCY THAT THE PRODUCT OR A SIMILARLY LABELED PRODUCT  
9 CONTAINS A SYNTHETIC DRUG.

10          (C) PROOF THAT THE PERSON POSSESSED, DISPLAYED, OR OFFERED THE  
11 PRODUCT FOR SALE OR KEPT A PLACE OF BUSINESS WHERE THE PRODUCT WAS  
12 POSSESSED, DISPLAYED, OR OFFERED FOR SALE IS PRIMA FACIE EVIDENCE THAT  
13 THE PERSON VIOLATED THIS SUBTITLE.

14 **17-20B-03.**

15          (A) A PERSON SUSPECTED OF VIOLATING THIS SUBTITLE SHALL PERMIT  
16 THE COMPTROLLER TO INSPECT:

17           (1) ITS SALES RECORDS, INCLUDING SALES RECEIPTS AND  
18 INVENTORY OR PRICE LISTS; AND

19           (2) THE GOODS OFFERED FOR SALE.

20          (B) SUBJECT TO THE HEARING PROVISIONS OF SUBSECTION (C) OF THIS  
21 SECTION, THE COMPTROLLER MAY SUSPEND OR REVOKE A LICENSE ISSUED TO A  
22 PERSON UNDER THIS TITLE IF THE PERSON FAILS TO COMPLY WITH THE  
23 PROVISIONS OF THIS SUBTITLE.

24          (C) (1) EXCEPT AS OTHERWISE PROVIDED IN § 10-226 OF THE STATE  
25 GOVERNMENT ARTICLE, BEFORE THE COMPTROLLER TAKES ANY FINAL ACTION  
26 UNDER THIS SUBTITLE, THE COMPTROLLER SHALL GIVE THE PERSON AGAINST  
27 WHOM THE ACTION IS CONTEMPLATED AN OPPORTUNITY FOR A HEARING BEFORE  
28 THE COMPTROLLER.

29           (2) THE COMPTROLLER SHALL GIVE NOTICE AND HOLD THE  
30 HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE  
31 GOVERNMENT ARTICLE.

1           **(3) THE COMPTROLLER MAY ADMINISTER OATHS IN A PROCEEDING**  
2 **UNDER THIS SUBSECTION.**

3           **(4) IF, AFTER DUE NOTICE, THE PERSON AGAINST WHOM THE ACTION**  
4 **IS CONTEMPLATED DOES NOT APPEAR, NEVERTHELESS THE COMPTROLLER MAY**  
5 **HEAR AND DETERMINE THE MATTER.**

6 **17-20B-04.**

7           **(A) (1) SUBJECT TO THE HEARING PROVISIONS OF SUBSECTION (B) OF**  
8 **THIS SECTION, IF A PERSON CONDUCTING BUSINESS IN THE STATE FAILS TO**  
9 **COMPLY WITH THIS SUBTITLE, THE COMPTROLLER MAY ORDER AN IMMEDIATE**  
10 **STOP SALE UNTIL A HEARING HAS BEEN HELD OR MAY ORDER A LAW ENFORCEMENT**  
11 **OFFICER TO SEIZE THE GOODS THAT THE PERSON IS OFFERING OR HAS OFFERED**  
12 **FOR SALE.**

13           **(2) SUBJECT TO THE HEARING PROVISIONS OF SUBSECTION (B) OF**  
14 **THIS SECTION, IF A PERSON POSSESSES, PROVIDES, DISTRIBUTES, DISPLAYS, SELLS,**  
15 **OR MARKETS A SYNTHETIC DRUG IN THE STATE, THE PERSON'S LICENSE IS VOID**  
16 **AND SHALL BE SEIZED BY THE LAW ENFORCEMENT OFFICER AND RETURNED TO THE**  
17 **COMPTROLLER, AND THE PROVISIONS OF PARAGRAPH (1) OF THIS SUBSECTION**  
18 **APPLY.**

19           **(B) (1) THE COMPTROLLER MAY ORDER SUMMARILY A STOP SALE OR A**  
20 **SEIZURE OF THE PERSON'S GOODS OR LICENSE IF THE COMPTROLLER:**

21                   **(I) FINDS THAT THE PUBLIC HEALTH, SAFETY, OR WELFARE**  
22 **REQUIRES EMERGENCY ACTION; AND**

23                   **(II) PROMPTLY GIVES THE LICENSEE:**

24                           **1. WRITTEN NOTICE OF THE STOP SALE OR SEIZURE, THE**  
25 **FINDING, AND THE REASONS THAT SUPPORT THE FINDING; AND**

26                           **2. AN OPPORTUNITY TO BE HEARD.**

27           **(2) (I) IF THE COMPTROLLER FINDS THAT EMERGENCY ACTION IS**  
28 **NOT NECESSARY UNDER PARAGRAPH (1) OF THIS SUBSECTION, BEFORE THE**  
29 **COMPTROLLER TAKES ANY FINAL ACTION UNDER SUBSECTION (A) OF THIS**  
30 **SECTION, THE COMPTROLLER SHALL GIVE THE PERSON AGAINST WHOM THE**  
31 **ACTION IS CONTEMPLATED AN OPPORTUNITY FOR A HEARING BEFORE THE**  
32 **COMPTROLLER.**

1           **(II) THE COMPTROLLER SHALL GIVE NOTICE AND HOLD THE**  
2 **HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE**  
3 **GOVERNMENT ARTICLE.**

4           **(III) THE COMPTROLLER MAY ADMINISTER OATHS IN A**  
5 **PROCEEDING UNDER THIS SUBSECTION.**

6           **(IV) IF, AFTER DUE NOTICE, THE PERSON AGAINST WHOM THE**  
7 **ACTION IS CONTEMPLATED DOES NOT APPEAR, NEVERTHELESS THE COMPTROLLER**  
8 **MAY HEAR AND DETERMINE THE MATTER.**

9           **(C) (1) ALL PROPERTY SEIZED BY A LAW ENFORCEMENT OFFICER UNDER**  
10 **THIS SECTION SHALL BE DEEMED PRIMA FACIE TO BE CONTRABAND OF LAW.**

11           **(2) ALL RIGHTS, TITLE, AND INTEREST IN THE PROPERTY SEIZED**  
12 **SHALL VEST IMMEDIATELY IN AND TO THE LOCAL GOVERNMENT, IF SEIZED BY A LAW**  
13 **ENFORCEMENT OFFICIAL OF A LOCAL GOVERNMENT, OR TO THE STATE, IF SEIZED**  
14 **BY STATE AUTHORITIES, AND MAY NOT BE RETURNED TO THE PERSON OR ANY**  
15 **OTHER PERSON, EXCEPT AS PROVIDED IN THIS SECTION.**

16           **(D) (1) IF THE ULTIMATE DISPOSITION OF CHARGES, IN CONNECTION**  
17 **WITH WHICH THE PROPERTY MAY HAVE BEEN SEIZED, RESULTS IN A RECORD OF**  
18 **CONVICTION BEING ENTERED AGAINST THE PERSON, THE STATE TREASURER OR**  
19 **THE FISCAL OFFICER OF THE LOCAL GOVERNMENT, WITHIN 90 DAYS AFTER THE**  
20 **DATE OF THE RECORD OF THE ENTRY OF CONVICTION, UNLESS THE CASE IS**  
21 **APPEALED, SHALL APPLY TO THE DISTRICT COURT OR CIRCUIT COURT OF THE**  
22 **COUNTY FOR AN ORDER DECLARING AND ORDERING THAT THE PROPERTY BE**  
23 **FORFEITED TO THE SOLE USE OF THE STATE OR LOCAL GOVERNMENT.**

24           **(2) BEFORE THE COURT TO WHICH AN APPLICATION IS DIRECTED**  
25 **SHALL PROCEED TO ORDER A FORFEITURE OF THE PROPERTY TO THE STATE OR**  
26 **LOCAL GOVERNMENT, THE COURT SHALL ESTABLISH TO ITS SATISFACTION THAT**  
27 **THERE IS NO PENDING AND UNDETERMINED SUIT OR PROCEEDING THAT HAS BEEN**  
28 **FILED IN A COURT OF COMPETENT JURISDICTION AGAINST THE STATE OR THE**  
29 **LOCAL GOVERNMENT SEEKING A RETURN OR RECOVERY OF THE PROPERTY HELD IN**  
30 **CUSTODY.**

31           **(3) ALL APPLICATIONS FOR THE FORFEITURE OF CONTRABAND**  
32 **SHALL BE BY PETITION.**

33           **(4) A COPY OF THE PETITION AND SHOW CAUSE ORDER SHALL BE**  
34 **SERVED IN THE FIRST INSTANCE IN ACCORDANCE WITH THE MARYLAND RULES.**

1           **(E) (1) ON DISPOSITION OF A CHARGE RESULTING IN ACQUITTAL,**  
2 **DISMISSAL, A STET, A NOLLE PROSEQUI, OR PROBATION UNDER § 6-220 OF THE**  
3 **CRIMINAL PROCEDURE ARTICLE, A PERSON CLAIMING THAT THE SEIZED**  
4 **PROPERTY IS NOT CONTRABAND OF LAW UNDER SUBSECTION (C) OF THIS SECTION**  
5 **AND SHOULD BE RETURNED TO THE PERSON MAY APPLY, WITHIN 1 YEAR AFTER THE**  
6 **DATE THE JUDGMENT OR ORDER WAS ENTERED OR THE ACTION WAS TAKEN THAT**  
7 **CONSTITUTED THE DISPOSITION AND ON GIVING 10 DAYS' PRIOR WRITTEN NOTICE**  
8 **TO THE STATE TREASURER OR APPROPRIATE LOCAL FISCAL OFFICER, TO THE**  
9 **APPROPRIATE COURT FOR A DETERMINATION THAT THE PROPERTY IS THE**  
10 **PROPERTY OF THE CLAIMANT AND FOR AN ORDER THAT IT BE RETURNED.**

11           **(2) IN A PROCEEDING ON THAT APPLICATION, AN ACQUITTAL, A**  
12 **DISMISSAL, OR A NOLLE PROSEQUI WITH RESPECT TO ANY INDICTMENT INVOLVED**  
13 **IN THE SEIZURE OF THE PROPERTY IS PRIMA FACIE EVIDENCE THAT THE PROPERTY**  
14 **IS NOT CONTRABAND.**

15           **(3) A CONVICTION, PLEA OF GUILTY OR OF NOLO CONTENDERE, OR**  
16 **PROBATION UNDER THE PROVISIONS OF § 6-220 OF THE CRIMINAL PROCEDURE**  
17 **ARTICLE IS PRIMA FACIE EVIDENCE THAT THE PROPERTY IS CONTRABAND.**

18           **(4) NO PRESUMPTION IN THE PROCEEDING SHALL ATTACH TO AN**  
19 **ENTRY OF STET.**

20           **(5) IF A PETITION IS NOT TIMELY AND PROPERLY FILED, OR IF IT IS**  
21 **FINALLY DECIDED AGAINST THE CLAIMANT, THE SEIZED PROPERTY SHALL BE**  
22 **FORFEITED TO THE CUSTODIAN WITHOUT FURTHER JUDICIAL ACTION.**

23           **(6) TIMELY NOTICE SHALL BE GIVEN BY CERTIFIED MAIL OR OTHER**  
24 **APPROPRIATE MEANS TO ANY KNOWN CLAIMANT, AT THE CLAIMANT'S LAST KNOWN**  
25 **ADDRESS, OF THE REQUIREMENTS OF THIS SECTION FOR MAKING CLAIM FOR THE**  
26 **RETURN OF THE SEIZED PROPERTY, OR THE SEIZED PROPERTY MAY NOT BE**  
27 **FORFEITED AS PROVIDED IN PARAGRAPH (5) OF THIS SUBSECTION.**

28           **(F) THE PROVISIONS OF THIS SECTION SHALL BE ENFORCED BY ANY STATE**  
29 **OR LOCAL LAW ENFORCEMENT OFFICER.**

30 **17-20B-05.**

31           **THE REQUIREMENTS OF THIS SUBTITLE ARE IN ADDITION TO AND DO NOT**  
32 **EXEMPT OR OTHERWISE ALTER THE OBLIGATIONS OF A PERSON UNDER THE**  
33 **REQUIREMENTS OF:**

1           **(1) THE SALES AND USE TAX LAW UNDER TITLES 11 AND 13 OF THE**  
2 **TAX – GENERAL ARTICLE; AND**

3           **(2) ANY OTHER LICENSING OR PERMIT REQUIREMENTS UNDER THIS**  
4 **TITLE OR UNDER ANY OTHER LAWS OF THE STATE OR A SUBDIVISION OF THE STATE.**

5 **17-20B-06.**

6           **(A) A PERSON WHO VIOLATES THIS SUBTITLE IS GUILTY OF A**  
7 **MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000**  
8 **OR IMPRISONMENT NOT EXCEEDING 30 DAYS.**

9           **(B) EACH AGENT OR OFFICER OF A CORPORATION CONVICTED OF**  
10 **VIOLATING THIS SUBTITLE WHO ACTUALLY ENGAGED IN THE BUSINESS IS**  
11 **INDIVIDUALLY SUBJECT TO THE PENALTIES PROVIDED BY LAW.**

12           **(C) THE PENALTY PROVIDED IN THIS SECTION DOES NOT AFFECT ANY**  
13 **OTHER PENALTY SPECIFICALLY PROVIDED BY LAW FOR A VIOLATION OF A LICENSE**  
14 **LAW.**

15           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 October 1, 2016.