

SENATE BILL 823

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By: **Senators Madaleno, Currie, Garagiola, and King**

Introduced and read first time: February 1, 2013

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Pipe Tobacco and Premium Cigars – Direct Sale and Shipment to Consumers**

3 FOR the purpose of establishing a direct tobacco shipper's permit to be issued by the
4 Office of the Comptroller; requiring a person to obtain a certain permit before
5 the person may engage in selling and shipping pipe tobacco or premium cigars
6 directly to a consumer in the State; requiring an applicant to submit a certain
7 application and pay a certain fee; providing for the scope of the permit;
8 specifying the term of the permit; requiring a direct tobacco shipper to perform
9 certain actions; requiring a direct tobacco shipper to meet certain requirements
10 to renew the permit; authorizing the Office to deny a renewal application under
11 certain circumstances; specifying certain requirements for receiving a direct
12 shipment of pipe tobacco or premium cigars; authorizing the Office to issue a
13 common carrier permit to certain persons; requiring a common carrier permit
14 applicant to submit a certain application and pay a certain fee; providing for the
15 scope of the common carrier permit; specifying the term of the permit; requiring
16 a common carrier to submit certain information to the Office in a certain
17 manner at certain times; requiring a common carrier to verify certain
18 information each year in a certain manner; requiring a common carrier to
19 maintain certain records for a certain period; authorizing the Office to adopt
20 certain regulations; prohibiting a person without a permit from selling and
21 shipping pipe tobacco or premium cigars directly to consumers in the State;
22 providing that each violation of certain provisions is a separate violation;
23 establishing certain penalties; requiring certain direct tobacco shippers to
24 complete and file with the Office a certain tobacco tax return; defining certain
25 terms; providing for the application of certain provisions of this Act; and
26 generally relating to direct tobacco shipper's permits and the direct sale and
27 shipment to consumers of pipe tobacco and premium cigars.

28 BY adding to

29 Article – Business Regulation

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 16.7–101 through 16.7–115 to be under the new title “Title 16.7. Direct
2 Tobacco Shippers’ Permits”
3 Annotated Code of Maryland
4 (2010 Replacement Volume and 2012 Supplement)

5 BY adding to
6 Article – Tax – General
7 Section 12–204
8 Annotated Code of Maryland
9 (2010 Replacement Volume and 2012 Supplement)

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

12 **Article – Business Regulation**

13 **TITLE 16.7. DIRECT TOBACCO SHIPPERS’ PERMITS.**

14 **16.7–101.**

15 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
16 INDICATED.

17 (B) (1) “COMMON CARRIER” MEANS A BUSINESS ENTITY THAT:

18 (I) HOLDS ITSELF OUT AS BEING AVAILABLE TO THE
19 PUBLIC TO TRANSPORT IN INTERSTATE AND FOREIGN COMMERCE FOR
20 COMPENSATION ANY CLASS OF PASSENGER OR PROPERTY; AND

21 (II) HOLDS A COMMON CARRIER PERMIT ISSUED UNDER §
22 16.7–110 OF THIS TITLE.

23 (2) “COMMON CARRIER” DOES NOT INCLUDE A BUSINESS ENTITY
24 THAT TRANSPORTS ONLY PROPERTY IT OWNS OR THAT IS CONSIGNED TO IT.

25 (C) “DIRECT TOBACCO SHIPPER” MEANS THE HOLDER OF A DIRECT
26 TOBACCO SHIPPER’S PERMIT ISSUED UNDER THIS TITLE AUTHORIZING THE
27 HOLDER TO SELL AND SHIP PIPE TOBACCO OR PREMIUM CIGARS.

28 (D) “PIPE TOBACCO” HAS THE MEANING STATED IN § 16.5–101 OF THIS
29 ARTICLE.

30 (E) “PREMIUM CIGARS” HAS THE MEANING STATED IN § 16.5–101 OF
31 THIS ARTICLE.

1 **16.7-102.**

2 **THIS TITLE DOES NOT APPLY TO A PERSON LICENSED UNDER TITLE 16 OR**
3 **TITLE 16.5 OF THIS ARTICLE.**

4 **16.7-103.**

5 **A PERSON SHALL BE ISSUED A DIRECT TOBACCO SHIPPER'S PERMIT BY**
6 **THE OFFICE OF THE COMPTROLLER BEFORE THE PERSON MAY ENGAGE IN**
7 **SELLING AND SHIPPING PIPE TOBACCO OR PREMIUM CIGARS DIRECTLY TO A**
8 **CONSUMER IN THE STATE.**

9 **16.7-104.**

10 **(A) AN APPLICANT FOR A DIRECT TOBACCO SHIPPER'S PERMIT SHALL:**

11 **(1) SUBMIT TO THE OFFICE OF THE COMPTROLLER A**
12 **COMPLETED APPLICATION ON THE FORM THAT THE OFFICE OF THE**
13 **COMPTROLLER PROVIDES; AND**

14 **(2) PAY A FEE OF \$200 FOR INITIAL ISSUANCE OF THE DIRECT**
15 **TOBACCO SHIPPER'S PERMIT.**

16 **(B) THE OFFICE OF THE COMPTROLLER SHALL ISSUE A DIRECT**
17 **TOBACCO SHIPPER'S PERMIT TO EACH APPLICANT WHO MEETS THE**
18 **REQUIREMENTS OF THIS TITLE FOR THE DIRECT TOBACCO SHIPPER'S PERMIT.**

19 **16.7-105.**

20 **A DIRECT TOBACCO SHIPPER'S PERMIT ENTITLES THE HOLDER TO SELL**
21 **AND SHIP PIPE TOBACCO OR PREMIUM CIGARS THROUGH A HOLDER OF A**
22 **COMMON CARRIER PERMIT TO A CONSUMER IN THE STATE BY RECEIVING AND**
23 **FILLING ORDERS THAT THE CONSUMER TRANSMITS BY ELECTRONIC OR OTHER**
24 **MEANS.**

25 **16.7-106.**

26 **THE TERM OF A DIRECT TOBACCO SHIPPER'S PERMIT IS 1 YEAR AND**
27 **BEGINS ON JULY 1.**

28 **16.7-107.**

29 **A DIRECT TOBACCO SHIPPER SHALL:**

1 **(1) ENSURE THAT ALL PACKAGES CONTAINING PIPE TOBACCO OR**
2 **PREMIUM CIGARS SHIPPED DIRECTLY TO A CONSUMER IN THE STATE ARE**
3 **CONSPICUOUSLY LABELED WITH:**

4 **(I) THE NAME OF THE DIRECT TOBACCO SHIPPER;**

5 **(II) THE NAME AND ADDRESS OF THE CONSUMER WHO IS**
6 **THE INTENDED RECIPIENT; AND**

7 **(III) THE WORDS “CONTAINS PIPE TOBACCO OR PREMIUM**
8 **CIGARS: SIGNATURE OF PERSON AT LEAST 18 YEARS OF AGE REQUIRED FOR**
9 **DELIVERY”;**

10 **(2) REPORT QUARTERLY TO THE OFFICE OF THE COMPTROLLER**
11 **THE TOTAL AMOUNT OF PIPE TOBACCO OR PREMIUM CIGARS SHIPPED IN THE**
12 **STATE, THE PRICE CHARGED, AND THE NAME AND ADDRESS OF EACH**
13 **PURCHASER;**

14 **(3) FILE A QUARTERLY TAX RETURN IN ACCORDANCE WITH §**
15 **12-204 OF THE TAX – GENERAL ARTICLE;**

16 **(4) PAY QUARTERLY TO THE OFFICE OF THE COMPTROLLER ALL**
17 **TOBACCO TAXES DUE ON SALES TO CONSUMERS IN THE STATE AND CALCULATE**
18 **THE TAXES AS IF THE SALES WERE MADE IN THE STATE;**

19 **(5) MAINTAIN FOR A PERIOD OF 3 YEARS COMPLETE AND**
20 **ACCURATE RECORDS OF ALL INFORMATION NEEDED TO VERIFY COMPLIANCE**
21 **WITH THIS TITLE;**

22 **(6) ALLOW THE OFFICE OF THE COMPTROLLER TO PERFORM AN**
23 **AUDIT OF THE DIRECT TOBACCO SHIPPER’S RECORDS ON REQUEST; AND**

24 **(7) CONSENT TO THE JURISDICTION OF THE OFFICE OF THE**
25 **COMPTROLLER OR OTHER STATE UNIT AND THE STATE COURTS CONCERNING**
26 **ENFORCEMENT OF THIS SECTION AND ANY RELATED LAW.**

27 **16.7-108.**

28 **(A) A DIRECT TOBACCO SHIPPER MAY RENEW ITS DIRECT TOBACCO**
29 **SHIPPER’S PERMIT EACH YEAR IF THE DIRECT TOBACCO SHIPPER:**

30 **(1) IS OTHERWISE ENTITLED TO HAVE A DIRECT TOBACCO**
31 **SHIPPER’S PERMIT;**

1 **(2) PROVIDES TO THE OFFICE OF THE COMPTROLLER A COPY OF**
2 **THE CURRENT PERMIT; AND**

3 **(3) PAYS TO THE COMPTROLLER A RENEWAL FEE OF \$200.**

4 **(B) THE OFFICE OF THE COMPTROLLER MAY DENY A RENEWAL**
5 **APPLICATION OF A DIRECT TOBACCO SHIPPER THAT FAILS TO:**

6 **(1) FILE A TAX RETURN REQUIRED UNDER THIS TITLE;**

7 **(2) PAY A FEE OR TAX WHEN DUE; OR**

8 **(3) AFTER RECEIVING NOTICE, COMPLY WITH A PROVISION OF**
9 **THIS TITLE OR A REGULATION THAT THE OFFICE OF THE COMPTROLLER**
10 **ADOPTS UNDER THIS TITLE.**

11 **16.7-109.**

12 **(A) TO RECEIVE A DIRECT SHIPMENT OF PIPE TOBACCO OR PREMIUM**
13 **CIGARS, A CONSUMER IN THE STATE SHALL BE AT LEAST 18 YEARS OLD.**

14 **(B) A PERSON WHO RECEIVES A SHIPMENT OF PIPE TOBACCO OR**
15 **PREMIUM CIGARS SHALL USE THE SHIPMENT FOR PERSONAL CONSUMPTION**
16 **ONLY AND MAY NOT RESELL IT.**

17 **16.7-110.**

18 **(A) A PERSON SHALL BE ISSUED A COMMON CARRIER PERMIT BEFORE**
19 **THE PERSON MAY ENGAGE IN TRANSPORTING PIPE TOBACCO OR PREMIUM**
20 **CIGARS FROM A DIRECT TOBACCO SHIPPER TO A CONSUMER.**

21 **(B) AN APPLICANT FOR A COMMON CARRIER PERMIT SHALL:**

22 **(1) SUBMIT TO THE OFFICE OF THE COMPTROLLER A**
23 **COMPLETED APPLICATION ON THE FORM THAT THE COMPTROLLER PROVIDES;**
24 **AND**

25 **(2) PAY A FEE OF \$100 TO THE OFFICE OF THE COMPTROLLER.**

26 **(C) (1) THE OFFICE OF THE COMPTROLLER MAY ISSUE A COMMON**
27 **CARRIER PERMIT TO A PERSON WHO MEETS THE DEFINITION OF A “COMMON**
28 **CARRIER” UNDER § 16.7-101 OF THIS TITLE.**

1 **(2) THE HOLDER OF A COMMON CARRIER PERMIT MAY DELIVER**
2 **TOBACCO FROM A LOCATION INSIDE OR OUTSIDE THE STATE TO A CONSUMER IN**
3 **THE STATE FOR THE CONSUMER'S PERSONAL USE UNDER THIS TITLE.**

4 **(D) THE TERM OF A COMMON CARRIER PERMIT IS 1 YEAR AND BEGINS**
5 **ON JULY 1.**

6 **(E) TO COMPLETE DELIVERY OF A SHIPMENT, THE COMMON CARRIER**
7 **SHALL REQUIRE FROM A CONSUMER AT THE ADDRESS LISTED ON THE SHIPPING**
8 **LABEL:**

9 **(1) THE SIGNATURE OF THE CONSUMER OR ANOTHER INDIVIDUAL**
10 **AT THE ADDRESS WHO IS AT LEAST 18 YEARS OLD; AND**

11 **(2) GOVERNMENT-ISSUED PHOTOGRAPHIC IDENTIFICATION**
12 **SHOWING THAT THE SIGNING INDIVIDUAL IS AT LEAST 18 YEARS OLD.**

13 **(F) A COMMON CARRIER SHALL REFUSE DELIVERY WHEN THE**
14 **INTENDED RECEIVING INDIVIDUAL APPEARS TO BE UNDER 18 YEARS OF AGE OR**
15 **REFUSES TO PRESENT VALID IDENTIFICATION.**

16 **(G) AT THE TIME OF INITIAL APPLICATION FOR A COMMON CARRIER**
17 **PERMIT AND ON REQUEST OF THE OFFICE OF THE COMPTROLLER, A COMMON**
18 **CARRIER SHALL SUBMIT TO THE OFFICE OF THE COMPTROLLER INFORMATION**
19 **CONCERNING THE TRAINING OF ITS DRIVERS IN VERIFYING THE AGE OF**
20 **RECIPIENTS OF DIRECT TOBACCO SHIPMENTS UNDER THIS TITLE.**

21 **(H) AT LEAST ONCE A YEAR, IN A MANNER ACCEPTABLE TO THE OFFICE**
22 **OF THE COMPTROLLER, A HOLDER OF A COMMON CARRIER PERMIT SHALL**
23 **VERIFY THAT THE SHIPPER OF TOBACCO INTO THE STATE UNDER THIS TITLE**
24 **HOLDS A VALID DIRECT TOBACCO SHIPPER'S PERMIT.**

25 **16.7-111.**

26 **(A) A COMMON CARRIER SHALL REPORT QUARTERLY TO THE OFFICE**
27 **OF THE COMPTROLLER:**

28 **(1) THE DATE OF EACH DELIVERY OF TOBACCO IN THE STATE;**
29 **AND**

30 **(2) THE NAME AND ADDRESS OF THE DIRECT TOBACCO SHIPPER**
31 **AND THE RECEIVING CONSUMER OF EACH DELIVERY.**

1 **(B) A COMMON CARRIER SHALL MAINTAIN FOR A PERIOD OF 3 YEARS**
 2 **COMPLETE AND ACCURATE RECORDS OF ALL INFORMATION NEEDED TO VERIFY**
 3 **COMPLIANCE WITH THIS TITLE.**

4 **16.7-112.**

5 **THE OFFICE OF THE COMPTROLLER MAY ADOPT REGULATIONS TO CARRY**
 6 **OUT THIS TITLE.**

7 **16.7-113.**

8 **A PERSON WITHOUT A DIRECT TOBACCO SHIPPER'S PERMIT MAY NOT**
 9 **SELL AND SHIP PIPE TOBACCO OR PREMIUM CIGARS DIRECTLY TO CONSUMERS**
 10 **IN THE STATE.**

11 **16.7-114.**

12 **EACH VIOLATION OF THIS TITLE IS A SEPARATE VIOLATION.**

13 **16.7-115.**

14 **UNLESS OTHERWISE SPECIFIED IN THIS TITLE, A PERSON WHO VIOLATES**
 15 **ANY PROVISION OF THIS TITLE IS GUILTY OF A MISDEMEANOR AND ON**
 16 **CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000 OR IMPRISONMENT**
 17 **NOT EXCEEDING 30 DAYS OR BOTH.**

18 **Article – Tax – General**

19 **12-204.**

20 **A DIRECT TOBACCO SHIPPER THAT HOLDS A DIRECT TOBACCO SHIPPER'S**
 21 **PERMIT UNDER TITLE 16.7 OF THE BUSINESS REGULATION ARTICLE SHALL**
 22 **COMPLETE AND FILE WITH THE OFFICE OF THE COMPTROLLER A TOBACCO TAX**
 23 **RETURN AS REQUIRED UNDER REGULATIONS ADOPTED BY THE OFFICE OF THE**
 24 **COMPTROLLER.**

25 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
 26 **July 1, 2013.**