

**CITY OF BALTIMORE
COUNCIL BILL 09-0385
(First Reader)**

Introduced by: Councilmembers Curran, Clarke, Henry
Introduced and read first time: August 10, 2009
Assigned to: Judiciary and Legislative Investigations Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Health Department, Department of Finance, Environmental Control Board

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Tobacco Products – Unpackaged Cigarettes or Cigars**

3 FOR the purpose of strengthening the prohibition against the sale or transfer of unpackaged
4 cigarettes and extending that prohibition to include certain unpackaged cigars; defining and
5 redefining certain terms; providing for certain exceptions; authorizing the Health
6 Commissioner to take certain actions against a food service facility that violates these
7 provisions; authorizing confiscation of items offered for sale or distribution in violation of
8 these provisions; imposing certain criminal and civil penalties; providing for a special
9 effective date; and generally relating to the sale or other distribution of unpackaged cigarettes
10 and cigars.

11 BY repealing and reordaining, with amendments

12 Article - Health

13 Title 12, Subtitle 2, to be under the amended subtitle designation,

14 “Subtitle 2. Unpackaged Cigarettes and Cigars”

15 Baltimore City Revised Code

16 (Edition 2000)

17 BY repealing and reordaining, with amendments

18 Article 1 - Mayor, City Council, and Municipal Agencies

19 Section(s) 40-14(e)(7)(Title 12) and 41-14(6)(Title 12)

20 Baltimore City Code

21 (Edition 2000)

22 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the**
23 **Laws of Baltimore City read as follows:**

24 **Baltimore City Revised Code**

25 **Article – Health**

26 ***Subtitle 2. [Sale of] Unpackaged Cigarettes AND CIGARS***

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

Council Bill 09-0385

1 **§ 12-201. Definitions.**

2 (a) *In general.*

3 In this subtitle, the following terms have the meanings indicated.

4 (B) *CIGAR.*

5 (1) "CIGAR" MEANS ANY ROLL OF TOBACCO THAT IS WRAPPED IN LEAF TOBACCO OR IN
6 ANY OTHER SUBSTANCE THAT CONTAINS TOBACCO.

7 (2) "CIGAR" DOES NOT INCLUDE A CIGARETTE.

8 (C) *CIGARETTE.*

9 "CIGARETTE" HAS THE MEANING STATED IN § 16-101(B) OF THE BUSINESS REGULATIONS
10 ARTICLE OF THE STATE CODE.

11 (D) *DISTRIBUTE.*

12 "DISTRIBUTE" MEANS TO:

13 (1) SELL, DELIVER, DISPENSE, ISSUE, TRANSFER, OR OTHERWISE DISTRIBUTE;

14 (2) OFFER TO SELL, DELIVER, DISPENSE, ISSUE, TRANSFER, OR OTHERWISE DISTRIBUTE;
15 OR

16 (3) CAUSE OR HIRE ANY PERSON TO:

17 (I) SELL, DELIVER, DISPENSE, ISSUE, TRANSFER, OR OTHERWISE DISTRIBUTE;
18 OR

19 (II) OFFER TO SELL, DELIVER, DISPENSE, ISSUE, TRANSFER OR OTHERWISE
20 DISTRIBUTE.

21 (E) *ORIGINAL PACKAGE.*

22 "ORIGINAL PACKAGE" MEANS THE PACK, BOX, CARTON, OR OTHER CONTAINER OF
23 CIGARETTES OR CIGARS THAT:

24 (1) WAS USED BY THEIR MANUFACTURER FOR PACKAGING THE CIGARETTES OR
25 CIGARS; AND

26 (2) IS INTENDED FOR ULTIMATE SALE OR OTHER DISTRIBUTION TO CONSUMERS AS A
27 PACKAGED UNIT AND NOT TO BE BROKEN FOR DISTRIBUTION OF INDIVIDUAL
28 CIGARETTES OR CIGARS.

Council Bill 09-0385

1 [(b) *Unpackaged cigarette.*

2 “Unpackaged cigarette” means any cigarette not contained in a sealed package of 20 or
3 more cigarettes that are designed and intended to be sold or distributed as a unit.]

4 **§ 12-202. {RESERVED}**

5 **§ 12-203. [§ 12-202.] Sale of unpackaged cigarettes prohibited.**

6 (A) “UNPACKAGED CIGARETTE” DEFINED.

7 “UNPACKAGED CIGARETTE” MEANS ANY CIGARETTE NOT CONTAINED IN A SEALED,
8 ORIGINAL PACKAGE THAT CONTAINS 20 OR MORE CIGARETTES DESIGNED AND INTENDED
9 TO BE SOLD OR OTHERWISE DISTRIBUTED AS A UNIT.

10 (B) *PROHIBITED CONDUCT.*

11 No person may sell or otherwise [transfer] DISTRIBUTE for consideration AN unpackaged
12 [cigarettes] CIGARETTE to any other person IN THIS CITY.

13 **§ 12-204. SALE OF UNPACKAGED CIGARS PROHIBITED.**

14 (A) “UNPACKAGED CIGAR” DEFINED.

15 “UNPACKAGED CIGAR” MEANS ANY CIGAR NOT CONTAINED IN A SEALED, ORIGINAL
16 PACKAGE THAT:

17 (1) CONTAINS 5 OR MORE CIGARS DESIGNED AND INTENDED TO BE SOLD OR
18 OTHERWISE DISTRIBUTED AS A UNIT; AND

19 (2) BEARS A HEALTH WARNING IN THE SIZE AND MANNER DESCRIBED IN THE AUGUST
20 18, 2000, FEDERAL TRADE COMMISSION DECISION AND ORDER FROM DOCKET NO.
21 3964, *IN THE MATTER OF SWISHER INTERNATIONAL, INCORPORATED*, REGARDLESS OF
22 THE SIZE OF THE PACKAGE AND REGARDLESS OF WHETHER THE MANUFACTURER,
23 WHOLESALE, OR RETAILER IS A PARTY TO OR OTHERWISE BOUND BY THAT
24 CONSENT DECISION AND ORDER.

25 (B) *PROHIBITED CONDUCT.*

26 EXCEPT AS SPECIFIED IN SUBSECTION (C) OF THIS SECTION, NO PERSON MAY SELL OR
27 OTHERWISE DISTRIBUTE FOR CONSIDERATION AN UNPACKAGED CIGAR TO ANY OTHER
28 PERSON IN THIS CITY.

29 (C) *EXCEPTIONS.*

30 (1) *COST.*

31 (i) THIS SECTION DOES NOT APPLY TO THE SALE OR OTHER DISTRIBUTION OF ANY
32 CIGAR THAT, SUBJECT TO ADJUSTMENT UNDER SUBPARAGRAPH (II) OF THIS
33 PARAGRAPH, HAS A WHOLESALE PRICE OF MORE THAN \$2 OR A RETAIL PRICE OF
34 MORE THAN \$2.50.

Council Bill 09-0385

1 (II) BY RULE OR REGULATION, THE HEALTH COMMISSIONER MAY ADJUST FROM TIME
2 TO TIME THE AMOUNTS SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH TO
3 REFLECT CHANGES IN THE APPLICABLE CONSUMER PRICE INDEX.

4 (2) *TOBACCO SHOPS.*

5 THIS SECTION DOES NOT APPLY TO THE SALE OR OTHER DISTRIBUTION OF ANY CIGAR
6 BY AND ON THE PREMISES OF A RETAIL TOBACCO ESTABLISHMENT THAT:

7 (I) DERIVES AT LEAST 75% OF ITS REVENUES, MEASURED BY AVERAGE DAILY
8 RECEIPTS, FROM THE SALE OF NON-CIGARETTE TOBACCO PRODUCTS; AND

9 (II) PROHIBITS THE ENTRY OF MINORS AT ALL TIMES.

10 (3) *FOR REDISTRIBUTION OUT OF CITY.*

11 THIS SECTION DOES NOT APPLY TO THE SALE OR OTHER DISTRIBUTION OF CIGARS IF
12 THE SALE OR OTHER DISTRIBUTION IS:

13 (I) MADE BY ONE PERSON ENGAGED IN THE BUSINESS OF DISTRIBUTING CIGARS TO
14 ANOTHER PERSON ENGAGED IN THE BUSINESS OF DISTRIBUTING CIGARS; AND

15 (II) FOR THE PURPOSE OF RESELLING OR OTHERWISE REDISTRIBUTING THE CIGARS
16 OUTSIDE OF THE CITY.

17 **§ 12-205. {RESERVED}**

18 **§ 12-206. SPECIAL PENALTIES.**

19 (A) *FOOD SERVICE FACILITIES.*

20 (1) IF A FOOD SERVICE FACILITY IS FOUND TO HAVE VIOLATED ANY PROVISION OF THIS
21 SUBTITLE MORE THAN ONCE IN A 24-MONTH PERIOD, THE HEALTH COMMISSIONER
22 MAY SUSPEND THE FACILITY'S FOOD SERVICE LICENSE FOR UP TO 14 DAYS.

23 (2) IF A FOOD SERVICE FACILITY IS FOUND TO HAVE VIOLATED ANY PROVISION OF THIS
24 SUBTITLE MORE THAN 3 TIMES IN A 24-MONTH PERIOD, THE HEALTH COMMISSIONER
25 MAY SUSPEND THE FACILITY'S FOOD SERVICE LICENSE FOR UP TO 30 DAYS.

26 (B) *CONFISCATION.*

27 THE HEALTH COMMISSIONER MAY CONFISCATE ANY AND ALL PRODUCTS OFFERED FOR
28 SALE OR OTHER DISTRIBUTION IN VIOLATION OF THIS SUBTITLE.

29 **§ 12-207. [§ 12-203.] Enforcement by citation.**

30 (a) *In general.*

31 In addition to any other civil or criminal remedy or enforcement procedure, this subtitle
32 may be enforced by issuance of:

Council Bill 09-0385

(1) an environmental citation under City Code Article 1, Subtitle 40 {"Environmental Control Board"}; or

(2) a civil citation under City Code Article 1, Subtitle 41 {"Civil Citations"}.

(b) *Process not exclusive.*

The issuance of a citation to enforce this subtitle does not preclude pursuing any other civil or criminal remedy or enforcement action authorized by law.

§ 12-208. [§ 12-204. Penalties] CRIMINAL PENALTIES.

Any person who violates any [provisions] PROVISION of this subtitle is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than \$1,000 for each offense.

Article 1. Mayor, City Council, and Municipal Agencies

Subtitle 40. Environmental Control Board

§ 40-14. Violations to which subtitle applies.

(e) *Provisions and penalties enumerated.*

(7) *Health Code*

....

Title 12: Tobacco Products

Subtitle 1: Indoor Smoking

Person smoking \$250

Employer, other person in charge \$500

Subtitle 2: [Sale of] Unpackaged Cigarettes AND CIGARS [150] \$500

Subtitle 4: Placement of Tobacco Products \$500

Subtitle 5: Distribution to Minors \$500

....

§ 41-14. Offenses to which subtitle applies – Listing.

(6) *Health Code*

....

Title 12: Tobacco Products

Subtitle 1: Indoor Smoking

Council Bill 09-0385

1	Person smoking	\$250
2	Employer, other person in charge	\$500
3	Subtitle 2: [Sale of] Unpackaged Cigarettes AND CIGARS	[\$150] \$500
4	Subtitle 4: Placement of Tobacco Products	\$500
5	Subtitle 5: Distribution to Minors	\$500
6	

7 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
8 are not law and may not be considered to have been enacted as a part of this or any prior
9 Ordinance.

10 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on October 1,
11 2009.