

HOUSE BILL 42

J1, C2, D4

(PRE-FILED)

4lr0164
CF SB 220

By: **Chair, Health and Government Operations Committee (By Request – Departmental – Health)**

Requested: September 13, 2023

Introduced and read first time: January 10, 2024

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Health – Public Health Services and Protections – Revisions**

3 FOR the purpose of repealing the exceptions that allow the sale, distribution, or purchase
4 of tobacco products, tobacco paraphernalia, and electronic smoking devices to or for
5 certain individuals who are active duty members of the military; authorizing the
6 Maryland Department of Health to reallocate from one county to another county
7 certain projected unspent grant funding relating to cancer to address certain funding
8 needs; altering the duties of the State Council on Child Abuse and Neglect; repealing
9 the requirement that the Secretary of Health appoint and convene an expert panel
10 on child abuse and neglect relating to research and data collection on a yearly basis;
11 transferring responsibility for the payment of certain emergency medical treatment
12 charges in cases of child abuse and neglect from the Department to the Governor's
13 Office of Crime Prevention, Youth, and Victim Services; and generally relating to
14 public health services and protections.

15 BY repealing and reenacting, with amendments,
16 Article – Business Regulation
17 Section 16–209(c), 16.5–214.1, and 16.7–204.1
18 Annotated Code of Maryland
19 (2015 Replacement Volume and 2023 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Criminal Law
22 Section 10–107(b), (c), and (d)
23 Annotated Code of Maryland
24 (2021 Replacement Volume and 2023 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article – Family Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Section 5–712(e), 5–7A–06, and 5–7A–09
Annotated Code of Maryland
(2019 Replacement Volume and 2023 Supplement)

BY repealing and reenacting, without amendments,
Article – Family Law
Section 5–7A–01(a)
Annotated Code of Maryland
(2019 Replacement Volume and 2023 Supplement)

BY repealing
Article – Health – General
Section 13–1013(d) and 13–2205
Annotated Code of Maryland
(2023 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 13–1013(e), (f), and (g), 24–305(b) and (d), and 24–307(a), (d), and (f)
Annotated Code of Maryland
(2023 Replacement Volume)

BY adding to
Article – Health – General
Section 13–1108(f)
Annotated Code of Maryland
(2023 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – Local Government
Section 1–1203
Annotated Code of Maryland
(2013 Volume and 2023 Supplement)

Preamble

WHEREAS, The minimum age in all states for the sale of tobacco products was raised from 18 to 21 years effective December 20, 2019, under 21 U.S.C. § 387f(d)(5); and

WHEREAS, State statutory provisions maintain exceptions for active duty military personnel between the ages of 18 and 21 years of age to purchase tobacco products, which has caused confusion among Maryland tobacco product sellers; and

WHEREAS, Distribution of funds for the Local Public Health Cancer Grant for cancer prevention, education, screening, and treatment are made in accordance with the formula established in § 13–1108(b) of the Health – General Article, and funds cannot be

redistributed between eligible counties during the fiscal year if distribution does not align with the fiscal needs of counties; and

WHEREAS, Reporting on Enforcement Strategies for Distribution of Tobacco Products to Minors under § 24–307(f) of the Health – General Article contains references to sections of the Criminal Law Article repealed by the enactment of Chapter 396 of the Acts of the General Assembly of 2019; and

WHEREAS, Reporting requirements of the Cigarette Restitution Fund’s Counter-Marketing Component under § 13–1013(d) of the Health – General Article are duplicative of reporting requirements of the Cigarette Restitution Fund’s Annual Accomplishments and Outcomes Report under § 7–317 of the State Finance and Procurement Article; and

WHEREAS, Section 13–2205 of the Health – General Article, establishing an expert panel on child abuse and neglect, can be repealed without reducing the amount or quality of information provided to the General Assembly as the expert panel has completed its work and the efforts and reporting requirements of the expert panel can be assumed by the State Council on Child Abuse and Neglect established under § 5–7A–01 of the Family Law Article; and

WHEREAS, The Maryland Department of Health currently is named as the payor of last resort and given authority to adopt regulations for payments for emergency medical treatment to children in cases of child abuse and neglect under § 5–712(e) of the Family Law Article; and

WHEREAS, The Governor’s Office of Crime Prevention, Youth, and Victim Services has taken over the responsibility as the payor of last resort for the payments for emergency medical treatment; now, therefore,

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

Article – Business Regulation

16–209.

(c) (1) A licensee shall post a sign in a location that is clearly visible to the consumer that states:

“No person under the age of 21 may be sold tobacco [products without military identification”] **PRODUCTS**”.

(2) The sign required under this subsection shall be written in letters at least one-half inch high.

16.5–214.1.

(a) A licensed other tobacco products retailer shall post a sign in a location that is clearly visible to the consumer that states:

“No person under the age of 21 may be sold tobacco [products without military identification”] **PRODUCTS**”.

(b) The sign required under this section shall be written in letters at least one-half inch high.

16.7–204.1.

(a) A retail licensee shall post a sign in a location that is clearly visible to the consumer that states:

“No person under the age of 21 may be sold tobacco [products without military identification”] **PRODUCTS**”.

(b) The sign required under this section shall be written in letters at least one-half inch high.

Article – Criminal Law

10–107.

(b) (1) This subsection does not apply to the distribution of a tobacco product or tobacco paraphernalia to[

(i)] an individual under the age of 21 years who is acting solely as the agent of the individual’s employer if the employer distributes tobacco products or tobacco paraphernalia for commercial purposes[; or

(ii) a purchaser or recipient who:

1. is at least 18 years of age;

2. is an active duty member of the military; and

3. presents a valid military identification].

(2) A person who distributes tobacco products for commercial purposes, including a person licensed under Title 16, Title 16.5, Title 16.7, or Title 16.9 of the Business Regulation Article, may not distribute to an individual under the age of 21 years:

(i) a tobacco product;

(ii) tobacco paraphernalia; or

(iii) a coupon redeemable for a tobacco product.

(c) A person not described in subsection (b)(2) of this section may not:

(1) purchase for or sell a tobacco product to an individual under the age of 21 years[, unless the individual:

(i) is at least 18 years of age;

(ii) is an active duty member of the military; and

(iii) presents a valid military identification]; or

(2) distribute tobacco paraphernalia to an individual under the age of 21 years[, unless the individual:

(i) is at least 18 years of age;

(ii) is an active duty member of the military; and

(iii) presents a valid military identification].

(d) In a prosecution for a violation of this section, it is a defense that the defendant examined the purchaser's or recipient's driver's license or other valid identification issued by a government unit that positively identified the purchaser or recipient as at least 21 years of age [or as at least 18 years of age and an active duty member of the military].

Article – Family Law

5–712.

(e) (1) In accordance with regulations adopted by the [Secretary of Health] **EXECUTIVE DIRECTOR OF THE GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES**, the [Maryland Department of Health] **GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES** shall pay for emergency medical treatment charges that are incurred on behalf of a child who is examined or treated under this section.

(2) The child's parent or guardian is liable to the [Maryland Department of Health] **GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES** for the payments and shall take any steps necessary to secure health benefits available for the child from a public or private benefit program.

(3) The local department shall:

(i) immediately determine whether a child treated or examined under this section is eligible for medical assistance payments; and

(ii) secure medical assistance benefits for any eligible child examined or treated under this section.

5-7A-01.

(a) There is a State Council on Child Abuse and Neglect.

5-7A-06.

(a) In addition to any duties set forth elsewhere, the Council shall, by examining the policies and procedures of State and local agencies and specific cases that the Council considers necessary to perform its duties under this section, evaluate the extent to which State and local agencies are effectively discharging their child protection responsibilities in accordance with:

(1) the State plan under 42 U.S.C. § 5106a(b);

(2) the child protection standards set forth in 42 U.S.C. § 5106a(b); and

(3) any other criteria that the Council considers important to ensure the protection of children, including:

(i) a review of the extent to which the State child protective services system is coordinated with the foster care and adoption program established under Part E of Title IV of the Social Security Act; and

(ii) a review of child fatalities and near fatalities.

(b) The Council may request that a local citizens review panel established under § 5-539.2 of this title conduct a review under this section and report its findings to the Council.

(c) The Council shall coordinate its activities under this section with the State Citizens Review Board for Children, local citizens review panels, [and] the child fatality review teams, **AND THE CHILD ABUSE MEDICAL PROVIDERS (MARYLAND CHAMP) INITIATIVE** in order to avoid unnecessary duplication of effort.

(d) The chairperson of the Council may designate members of the Children's Justice Act Committee as special members of the Council for the purpose of carrying out the duties set forth in this section.

5-7A-09.

(a) The Council shall report and make recommendations annually to the Governor and the General Assembly on:

(1) ACTIVITIES OF THE MARYLAND CHAMP INITIATIVE ESTABLISHED UNDER TITLE 13, SUBTITLE 22 OF THE HEALTH – GENERAL ARTICLE, INCLUDING DATA COLLECTED ON CHILD ABUSE AND NEGLECT DIAGNOSES AND TREATMENT; AND

(2) matters relating to the prevention, detection, prosecution, and treatment of child abuse and neglect, including policy and training needs that require the attention and action of the Governor or the General Assembly.

(b) The Council shall annually prepare and make available to the public a report containing a summary of its activities under § 5–7A–05 of this subtitle.

Article – Health – General

13–1013.

[(d) Subject to subsection (c)(2) of this section, before spending any funds allocated in the State budget to the Counter–Marketing and Media Component and no later than January 1, 2001, the Department shall submit a report to the Governor and, subject to § 2–1257 of the State Government Article, the General Assembly that:

(1) Identifies the goals of the Counter–Marketing and Media Component and the target dates for meeting these goals;

(2) Describes the various elements of the Counter–Marketing and Media Component and how the Department plans to implement the Component; and

(3) Identifies the different target audiences of the Counter–Marketing and Media Component.]

[(e)] (D) (1) The Department may contract with a higher education institution or private entity to implement any part of the Counter–Marketing and Media Component.

(2) If the Department determines that any part of the Counter–Marketing and Media Component should be implemented by a higher education institution or private entity, the Department shall issue a request for proposal to select the entity that will implement that part of the Component.

(3) At a minimum, the request for proposal shall:

(i) State with specificity the goals of the Counter–Marketing and Media Component;

(ii) State with specificity the objectives and performance criteria that will be used to measure the success of the program to which the request for proposal relates; and

(iii) Require that the response to the request for proposal include a plan to reach the targeted audiences identified by the Department.

(4) If the Department issues a request for proposal to select an entity to implement any part of the Counter-Marketing and Media Component, the Department shall use the criteria established in § 13-1003(e)(5) of this subtitle as a guide in administering the request for proposal process.

[(f)] (E) To the extent practicable, the Department shall take steps to maximize the cost effectiveness of the Counter-Marketing and Media Component, including:

(1) Using advertisements and other communications and public relations products and services that have been developed by and shown to be effective in other states;

(2) Subject to subsection **[(g)] (F)** of this section, using money that is allocated to the Counter-Marketing and Media Component to obtain money from the federal government, the National Public Education Fund, or any other entity; and

(3) Coordinating the purchase of broadcast time with other states.

[(g)] (F) The Department may not accept money from the federal government, the National Public Education Fund, or any other entity if the Department is required to accept, as a condition of receiving the money, restrictions on the content of advertisements, communications, or other public relations products or services that are funded with money from the Cigarette Restitution Fund if the restrictions are inconsistent with the purposes of this subtitle.

13-1108.

(F) THE DEPARTMENT MAY REALLOCATE PROJECTED UNSPENT FUNDS AWARDED TO A COUNTY TO ANOTHER COUNTY AS NEEDED DURING THE FISCAL YEAR IN ORDER TO ADDRESS ANY UNMET COUNTY FUNDING NEEDS AS DETERMINED UNDER § 13-1107 OF THIS SUBTITLE.

[13-2205.

(a) The Secretary shall appoint and convene an expert panel on child abuse and neglect relating to research and data collection at least one time each year.

(b) The panel shall assist the Secretary in:

1 (1) Reviewing the appropriateness of current procedural terminology
2 (CPT) codes and billing protocols for services provided regarding child abuse and neglect;
3 and

4 (2) Determining how diagnosis and treatment data may be preserved to
5 provide statistics on the extent of child abuse and neglect in the State, including through
6 the creation of a special billing code.

7 (c) The panel shall meet at least one time each year with representatives from
8 each emergency room, child advocacy center, and any other facility that provides expert
9 child abuse and neglect care, as defined in § 5–712 of the Family Law Article, to provide
10 training in current procedural terminology (CPT) codes and billing protocols.

11 (d) On or before December 1 of each year, the panel shall submit a report, in
12 accordance with § 2–1257 of the State Government Article, to the General Assembly on the
13 data collected on child abuse and neglect diagnosis and treatment and the activities of the
14 Initiative.]

15 24–305.

16 (b) (1) Except as provided in paragraph (2) of this subsection, a person may
17 not sell, distribute, or offer for sale to an individual under the age of 21 years an electronic
18 smoking device, as defined in § 16.7–101(c) of the Business Regulation Article.

19 (2) This subsection does not apply to[:

20 (i) An] AN electronic smoking device that contains or delivers
21 nicotine intended for human consumption if the device has been approved by the United
22 States Food and Drug Administration for sale as a tobacco cessation product and is being
23 marketed and sold solely for this purpose[; or

24 (ii) A purchaser or recipient who:

- 25 1. Is at least 18 years of age;
26 2. Is an active duty member of the military; and
27 3. Presents a valid military identification].

28 (d) In a prosecution for a violation of this section, it is a defense that the defendant
29 examined the purchaser's or recipient's driver's license or other valid identification issued
30 by a government unit that positively identified the purchaser or recipient as at least 21
31 years of age [or as at least 18 years of age and an active duty member of the military].

32 24–307.

(a) (1) This section does not apply to the distribution of a coupon that is redeemable for a tobacco product if the coupon is:

(i) Contained in a newspaper, a magazine, or any other type of publication in which the coupon is incidental to the primary purpose of the publication; or

(ii) Sent through the mail.

(2) This section does not apply to the distribution of a tobacco product or tobacco paraphernalia to[:

(i) An] AN individual under the age of 21 years who is acting solely as the agent of the individual's employer if the employer distributes tobacco products or tobacco paraphernalia for commercial purposes[; or

(ii) A purchaser or recipient who:

1. Is at least 18 years of age;

2. Is an active duty member of the military; and

3. Presents a valid military identification].

(d) In a prosecution for a violation of subsection (b) of this section, it is a defense that the defendant examined the purchaser's or recipient's driver's license or other valid identification issued by a governmental unit that positively identified the purchaser or recipient as at least 21 years old [or as at least 18 years of age and an active duty member of the military].

(f) (1) The Maryland Department of Health, in collaboration and consultation with the Office of the Comptroller, the Executive Director of the Alcohol [and], Tobacco, AND CANNABIS Commission, local health departments, and local law enforcement agencies, shall develop ongoing strategies for enforcement of [§§ 10–107 and 10–108] § 10–107 of the Criminal Law Article.

(2) On or before October 1 each year, the Department shall report to the General Assembly, in accordance with § 2–1257 of the State Government Article, on:

(i) The development of enforcement strategies required under paragraph (1) of this subsection; and

(ii) Training and assistance to tobacco retailers to improve compliance with § 10–107 of the Criminal Law Article.

Article – Local Government

1 1–1203.

2 (a) This section applies only in:

3 (1) Carroll County;

4 (2) Cecil County;

5 (3) Garrett County; and

6 (4) St. Mary's County.

7 (b) Subsection (c)(3) of this section does not apply to the distribution of a coupon
8 that is redeemable for a tobacco product if the coupon:

9 (1) is contained in a newspaper, magazine, or other type of publication and
10 the coupon is incidental to the primary purpose of the publication; or

11 (2) is sent through the mail.

12 (c) A person may not:

13 (1) distribute a tobacco product to an individual under the age of 21 years,
14 unless[:

15 (i)] the individual is acting solely as the agent of the individual's
16 employer who is engaged in the business of distributing tobacco products; [or

17 (ii) the individual:

18 1. is at least 18 years of age;

19 2. is an active duty member of the military; and

20 3. presents a valid military identification;]

21 (2) distribute cigarette rolling papers to an individual under the age of 21
22 years[, unless the individual:

23 (i) is at least 18 years of age;

24 (ii) is an active duty member of the military; and

25 (iii) presents a valid military identification]; or

(3) distribute to an individual under the age of 21 years a coupon redeemable for a tobacco product[, unless the individual:

(i) is at least 18 years of age;

(ii) is an active duty member of the military; and

(iii) presents a valid military identification].

(d) A person has not violated this section if:

(1) the person examined the driver's license or other valid government-issued identification presented by the recipient of a tobacco product, cigarette rolling paper, or coupon redeemable for a tobacco product; and

(2) the license or other identification positively identified the recipient as being at least 21 years old [or as being at least 18 years of age and an active duty member of the military].

(e) (1) In Carroll County and St. Mary's County, a person who violates this section commits a civil infraction and is subject to a civil penalty of:

(i) \$300 for the first violation; and

(ii) \$500 for any subsequent violation within 24 months after the previous citation.

(2) In Cecil County, a person who violates this section commits a civil infraction and is subject to a civil penalty of:

(i) \$300 for the first violation;

(ii) \$500 for a second violation; and

(iii) \$750 for any subsequent violation.

(3) In Garrett County, a person who violates this section commits a civil infraction and is subject to a civil penalty not exceeding \$300.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2024.