

SENATE BILL 273

C2, J1

11r0933

(PRE-FILED)

By: **Senator Kramer**

Requested: October 13, 2020

Introduced and read first time: January 13, 2021

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Electronic Smoking Device Regulation Act of 2021**

3 FOR the purpose of repealing the electronic smoking device retail license; altering certain
4 definitions in the Clean Indoor Air Act to include a prohibition on electronic smoking
5 devices and exhaled electronic smoking device vapor under certain circumstances;
6 altering the definition of “electronic smoking devices manufacturer” to limit the
7 manner in which a manufacturer may sell electronic smoking devices to consumers;
8 altering the definition of “vape shop vendor” to require that the vendor exclusively
9 sell electronic smoking devices and related accessories to consumers on the premises
10 of its place of business; requiring certain licensees to obtain an additional license in
11 order to manufacture, distribute, or sell electronic smoking devices; requiring a
12 certain applicant to register with and pay a fee to a local health department;
13 prohibiting a vape shop vendor from selling certain sealed and prefilled devices;
14 authorizing a vape shop vendor to sell certain cartridges or pods; requiring licensees
15 to file a certain statement with the local health department and the Executive
16 Director of the Alcohol and Tobacco Commission before selling an electronic smoking
17 device in the State; requiring a vape shop vendor to post a certain sign in a certain
18 location; requiring a vape shop vendor to electronically scan a prospective consumer’s
19 government issued identification to verify certain information; prohibiting a vape
20 shop vendor from allowing certain individuals to enter the premises of the licensed
21 business; providing for the use of certain license fees; authorizing the Executive
22 Director or the Maryland Department of Health to test electronic smoking devices to
23 ensure that they contain certain ingredients; authorizing the Executive Director and
24 the Department to jointly adopt certain regulations; authorizing a vape shop vendor
25 to assert a certain defense against a certain prosecution only if a certain condition is
26 met; stating the intent of the General Assembly; requiring the Executive Director to
27 provide certain notice to certain people affected by the provisions of this Act; altering
28 certain definitions; defining certain terms; making conforming changes; making the
29 provisions of this Act severable; providing for a delayed effective date for certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



provisions of this Act; and generally relating to the regulation of electronic smoking devices.

BY repealing and reenacting, without amendments,
Article – Business Regulation
Section 16–209, 16.7–205, and 16.7–213
Annotated Code of Maryland
(2015 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,
Article – Business Regulation
Section 16.7–101 through 16.7–204, 16.7–204.1, 16.7–206, 16.7–211, 16.7–212,
16.7–213.1, and 16.7–214
Annotated Code of Maryland
(2015 Replacement Volume and 2020 Supplement)

BY adding to
Article – Business Regulation
Section 16.7–215
Annotated Code of Maryland
(2015 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,
Article – Criminal Law
Section 10–101(a) and (d) and 10–107(a) through (c)
Annotated Code of Maryland
(2012 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 10–107(d)
Annotated Code of Maryland
(2012 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 24–501 and 24–505
Annotated Code of Maryland
(2019 Replacement Volume and 2020 Supplement)

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

Article – Business Regulation

16–209.

1 (a) A licensee shall display a license in the way that the Executive Director
2 requires by regulation.

3 (b) A licensee who sells cigarettes through a vending machine:

4 (1) shall place each package of cigarettes in the machine so that when the
5 package is visible the tax stamps required by § 12–304 of the Tax – General Article are also
6 visible; and

7 (2) in the way that the Executive Director requires by regulation, shall:

8 (i) identify each vending machine with a conspicuous label that
9 states the licensee’s name, address, and telephone number; and

10 (ii) display on a conspicuous label applicable prohibitions and
11 penalties under § 10–107 of the Criminal Law Article.

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

14 “No person under the age of 21 may be sold tobacco products without military
15 identification”.

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

18 16.7–101.

19 (a) In this title the following words have the meanings indicated.

20 (b) “County license” means a license issued by the clerk to sell electronic smoking
21 devices to consumers in a county.

22 (c) (1) “Electronic smoking device” means a device that can be used to deliver
23 aerosolized or vaporized nicotine to an individual inhaling from the device.

24 (2) “Electronic smoking device” includes:

25 (i) an electronic cigarette, an electronic cigar, an electronic cigarillo,
26 an electronic pipe, an electronic hookah, a vape pen, and vaping liquid; and

27 (ii) any component, part, or accessory of such a device regardless of
28 whether or not it is sold separately, including any substance intended to be aerosolized or
29 vaporized during use of the device.

30 (3) “Electronic smoking device” does not include a drug, device, or
31 combination product authorized for sale by the U.S. Food and Drug Administration under

the Federal Food, Drug, and Cosmetic Act.

(d) “Electronic smoking devices manufacturer” means a person that:

(1) manufactures, mixes, or otherwise produces electronic smoking devices intended for sale in the State, including electronic smoking devices intended for sale in the United States through an importer; and

(2) (i) [sells electronic smoking devices to a consumer, if the consumer purchases or orders the devices through the mail, a computer network, a telephonic network, or another electronic network, a licensed electronic smoking devices wholesaler distributor, or a licensed electronic smoking devices wholesaler importer in the State;

(ii)] if the electronic smoking devices manufacturer also holds a license to act as [an electronic smoking devices retailer or] a vape shop vendor, sells electronic smoking devices **IN THE SAME MANNER AS A VAPE SHOP VENDOR** to consumers located in the State; or

[(iii)] **(II)** unless otherwise prohibited or restricted under local law, this article, or the Criminal Law Article, distributes sample electronic smoking devices to a licensed [electronic smoking devices retailer or] vape shop vendor.

[(e) “Electronic smoking devices retailer” means a person that:

(1) sells electronic smoking devices to consumers;

(2) holds electronic smoking devices for sale to consumers; or

(3) unless otherwise prohibited or restricted under local law, this article, the Criminal Law Article, or § 24–305 of the Health – General Article, distributes sample electronic smoking devices to consumers in the State.]

[(f)] **(E)** “Electronic smoking devices wholesaler distributor” means a person that:

(1) obtains at least 70% of its electronic smoking devices from a holder of an electronic smoking devices manufacturer license under this subtitle or a business entity located in the United States; and

(2) (i) holds electronic smoking devices for sale to another person for resale; or

(ii) sells electronic smoking devices to another person for resale.

[(g)] **(F)** “Electronic smoking devices wholesaler importer” means a person that:

(1) obtains at least 70% of its electronic smoking devices from a business entity located in a foreign country; and

(2) (i) holds electronic smoking devices for sale to another person for resale; or

(ii) sells electronic smoking devices to another person for resale.

[(h)] (G) “Executive Director” means the Executive Director of the Alcohol and Tobacco Commission.

[(i)] (H) “License” means:

(1) a license issued by the Executive Director under § 16.7–203(a) of this title to:

(i) act as a licensed electronic smoking devices manufacturer;

(ii) act as a licensed electronic smoking devices wholesaler distributor; or

(iii) act as a licensed electronic smoking devices wholesaler importer; or

(2) a license issued by the clerk under § 16.7–203(b) of this title to[

(i) act as a licensed electronic smoking devices retailer; or

(ii)] act as a licensed vape shop vendor.

[(j)] (I) “Sell” means to exchange or transfer, or to agree to exchange or transfer, title or possession of property, in any manner or by any means, for consideration.

[(k)] (J) “Vape shop vendor” means an electronic smoking devices business that [derives at least 70% of its revenues, measured by average daily receipts, from the sale of] **EXCLUSIVELY SELLS** electronic smoking devices and related accessories **TO CONSUMERS ON THE PREMISES OF ITS PLACE OF BUSINESS.**

[(l)] (K) “Vaping liquid” means a liquid that:

(1) consists of propylene glycol, vegetable glycerin, or other similar substance;

(2) may or may not contain natural or artificial flavors;

(3) may or may not contain nicotine; and

(4) converts to vapor intended for inhalation when heated in an electronic device.

16.7–102.

(a) The Executive Director may delegate any power or duty of the Executive Director under this title.

(b) Any person licensed under Title 16 or Title 16.5 of this article, or an affiliate, as defined under § 16–402(c) of this article, of a person licensed under Title 16 of this article[:

(1) is authorized to manufacture, distribute, or sell electronic smoking devices pursuant to this title in the same capacity as the person is licensed under Title 16 or Title 16.5 of this article; and

(2) may not be required to] **MUST** obtain an additional license under this title **IN ORDER TO MANUFACTURE, DISTRIBUTE, OR SELL ELECTRONIC SMOKING DEVICES PURSUANT TO THIS TITLE.**

16.7–201.

[(a)] A person must hold an appropriate license before the person may act as:

(1) an electronic smoking devices manufacturer;

(2) [an electronic smoking devices retailer;

(3)] an electronic smoking devices wholesaler distributor;

[(4)] (3) an electronic smoking devices wholesaler importer; or

[(5)] (4) a vape shop vendor.

[(b)] A place of business in which a person acts as an electronic smoking devices retailer or a vape shop vendor must hold an appropriate license.]

16.7–202.

(a) (1) An applicant for a license to act as an electronic smoking devices manufacturer, electronic smoking devices wholesaler distributor, or electronic smoking devices wholesaler importer shall:

(i) obtain an appropriate county license by submitting an application to the Executive Director on the form and containing the information that the

1 Executive Director requires;

2 (ii) indicate the licenses for which the applicant is applying; and

3 (iii) except as provided in paragraph (2) of this subsection, pay to the
4 Executive Director a fee of \$25 for each license for which the applicant applies.

5 (2) An applicant for a license to act as an electronic smoking devices
6 wholesaler distributor or electronic smoking devices wholesaler importer shall pay to the
7 Executive Director a fee of \$150.

8 (b) (1) An applicant for a license to act as [an electronic smoking devices
9 retailer or] a vape shop vendor:

10 (i) shall obtain a county license by submitting to the clerk an
11 application for each permanent or temporary place of business located in the same
12 enclosure and operated by the same applicant; and

13 (ii) [except as provided in paragraph (2) of this subsection,] shall pay
14 to the clerk a fee of \$25.

15 (2) The application shall:

16 (i) be made on the form that the clerk requires; and

17 (ii) contain the information that the Executive Director requires.

18 **(3) (I) AN APPLICANT FOR A LICENSE TO ACT AS A VAPE SHOP**
19 **VENDOR SHALL REGISTER WITH AND PAY AN ADDITIONAL FEE TO THE LOCAL**
20 **HEALTH DEPARTMENT.**

21 **(II) THE FEE REQUIRED UNDER THIS PARAGRAPH SHALL BE SET**
22 **BY THE MARYLAND DEPARTMENT OF HEALTH IN THE AMOUNT NECESSARY FOR THE**
23 **MARYLAND DEPARTMENT OF HEALTH TO CARRY OUT ITS DUTIES UNDER THIS**
24 **TITLE.**

25 (c) A licensee shall display a license in the way that the Executive Director
26 requires by regulation.

27 (d) If a person has had a license revoked under § 16.7–207 of this subtitle, the
28 person may not reapply for a license within 1 year after the date when the prior license was
29 revoked.

30 16.7–203.

31 (a) The Executive Director shall issue an appropriate license to each applicant

that meets the requirements of this subtitle for a license to act as an electronic smoking devices manufacturer, electronic smoking devices wholesaler distributor, or electronic smoking devices wholesaler importer.

(b) The clerk shall issue to each applicant that meets the requirements of this subtitle a license to act as [an electronic smoking devices retailer or] a vape shop vendor.

(c) The clerk shall forward a copy of an application received for each license issued under subsection (b) of this section to the Executive Director within 30 days after issuance of the license.

16.7–204.

(a) **[An] SUBJECT TO SUBSECTION (D) OF THIS SECTION, AN** electronic smoking devices manufacturer license authorizes the licensee to:

(1) sell electronic smoking devices to:

(i) a licensed electronic smoking devices wholesaler located in the State;

(ii) an electronic smoking devices wholesaler or retailer located outside the State if the electronic smoking devices may be sold lawfully in Maryland; **AND**

(iii) a licensed vape shop vendor[; and

(iv) a consumer if:

1. the licensee manufactured the devices; and

2. the consumer purchases or orders the devices through the mail, a computer network, a telephonic network, or another electronic network];

(2) if the electronic smoking devices manufacturer licensee also holds a license to act as [an electronic smoking devices retailer or] a vape shop vendor, transfer electronic smoking devices to inventory for sale under the [retail license or] vape shop license; and

(3) except as otherwise prohibited or restricted under local law, this article, or the Criminal Law Article, distribute electronic smoking devices products to a licensed [electronic smoking devices retailer or] vape shop vendor.

[(b)] An electronic smoking devices retailer license authorizes the licensee to:

(1) sell electronic smoking devices to consumers;

(2) buy electronic smoking devices from an electronic smoking devices wholesaler distributor or electronic smoking devices wholesaler importer;

(3) if the electronic smoking devices retailer licensee also holds a license to act as an electronic smoking devices manufacturer, sell at retail electronic smoking devices manufactured under the manufacturer license; and

(4) except as otherwise prohibited or restricted under local law, this article, the Criminal Law Article, or § 24–305 of the Health – General Article, distribute sample electronic smoking devices products to consumers in the State.]

[(c)] (B) [An] SUBJECT TO SUBSECTION (D) OF THIS SECTION, AN electronic smoking devices wholesaler distributor license or electronic smoking devices wholesaler importer license authorizes the licensee to:

(1) sell electronic smoking devices to [electronic smoking devices retailers and] vape shop vendors;

(2) buy electronic smoking devices directly from an electronic smoking devices manufacturer and an electronic smoking devices wholesaler distributor or electronic smoking devices wholesaler importer;

(3) hold electronic smoking devices; and

(4) sell electronic smoking devices to another licensed electronic smoking devices wholesaler distributor or electronic smoking devices wholesaler importer.

[(d)] (C) (1) [A] SUBJECT TO SUBSECTION (D) OF THIS SECTION AND PARAGRAPH (2) OF THIS SUBSECTION, A vape shop vendor license authorizes the licensee to:

[(1)] (I) sell electronic smoking devices as a vape shop vendor **TO CONSUMERS ON THE PREMISES OF THE LICENSEE’S PLACE OF BUSINESS;**

[(2)] (II) if the vape shop vendor licensee also holds a license to act as an electronic smoking devices manufacturer, sell at retail **ON THE VAPE SHOP VENDOR PREMISES** electronic smoking devices manufactured under the manufacturer license; and

[(3)] (III) buy electronic smoking devices from an electronic smoking devices manufacturer, an electronic smoking devices wholesaler distributor, or an electronic smoking devices wholesaler importer.

(2) (I) A VAPE SHOP VENDOR MAY NOT SELL AN ELECTRONIC SMOKING DEVICE THAT:

1. IS SEALED AND PREFILLED WITH VAPING LIQUID IN A

1 CONTAINER THAT AFFIXES DIRECTLY TO THE BATTERY OR HEATING MECHANISM OF
2 THE ELECTRONIC SMOKING DEVICE; AND

3 2. CONTAINS A NATURAL OR ARTIFICIAL FLAVOR,
4 OTHER THAN TOBACCO.

5 (II) A VAPE SHOP VENDOR MAY SELL AN ELECTRONIC SMOKING
6 DEVICE CARTRIDGE OR POD THAT HOLDS LIQUID THAT IS TO BE AEROSOLIZED
7 THROUGH PRODUCT USE CONTAINING A NATURAL OR ARTIFICIAL FLAVOR OTHER
8 THAN TOBACCO ONLY IF THE CARTRIDGE OR POD:

9 1. CANNOT BE USED ALONE TO DELIVER AEROSOLIZED
10 NICOTINE TO AN INDIVIDUAL INHALING FROM THE DEVICE; AND

11 2. IS SOLD SEPARATELY FROM AN ELECTRONIC
12 SMOKING DEVICE THAT IT IS DESIGNED TO FIT WITHIN OR OPERATE AS PART OF THE
13 ELECTRONIC SMOKING DEVICE.

14 (D) BEFORE A LICENSEE MAY SELL AN ELECTRONIC SMOKING DEVICE IN
15 THE STATE, THE LICENSEE SHALL FILE A STATEMENT WITH THE LOCAL HEALTH
16 DEPARTMENT AND THE EXECUTIVE DIRECTOR THAT LISTS ALL COMPONENT PARTS
17 AND INGREDIENTS OF THE ELECTRONIC SMOKING DEVICE.

18 16.7–204.1.

19 (a) A [retail licensee] VAPE SHOP VENDOR shall post a sign in a location that is
20 clearly visible to the consumer that CONTAINS A SIMILAR STATEMENT, IN A SIMILAR
21 FORM, TO THAT REQUIRED OF LICENSEES UNDER § 16–209 OF THIS ARTICLE [states:

22 “No person under the age of 21 may be sold tobacco products without military
23 identification”.

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

26 (B) BEFORE SELLING AN ELECTRONIC SMOKING DEVICE, A VAPE SHOP
27 VENDOR SHALL ELECTRONICALLY SCAN A PROSPECTIVE CONSUMER’S
28 GOVERNMENT–ISSUED IDENTIFICATION TO VERIFY THAT THE CONSUMER MAY
29 LEGALLY RECEIVE THE ELECTRONIC SMOKING DEVICE IN COMPLIANCE WITH §
30 10–107 OF THE CRIMINAL LAW ARTICLE.

31 (C) A VAPE SHOP VENDOR MAY NOT ALLOW AN INDIVIDUAL WHO MAY NOT
32 LEGALLY RECEIVE AN ELECTRONIC SMOKING DEVICE IN COMPLIANCE WITH §
33 10–107 OF THE CRIMINAL LAW ARTICLE TO ENTER THE PREMISES OF THE

1 **LICENSED BUSINESS.**

2 16.7–205.

3 (a) Unless a license is renewed for a 1–year term as provided in this section, the
4 license expires on the date set by the issuing official.

5 (b) At least 1 month before a license issued under this subtitle expires, the issuing
6 official shall send to the licensee a renewal notice that states the date on which the current
7 license expires.

8 (c) Before a license issued under this subtitle expires, the licensee may renew the
9 license for an additional 1–year term, if the licensee:

10 (1) otherwise is entitled to be licensed;

11 (2) submits to the issuing official a renewal application on the form that
12 the issuing official requires; and

13 (3) pays to the issuing official the license fee required under § 16.7–203 of
14 this subtitle.

15 (d) The issuing official shall renew the license of each licensee that meets the
16 requirements of this section.

17 16.7–206.

18 (a) (1) A [licensed electronic smoking devices retailer or a] licensed vape shop
19 vendor may not assign the license.

20 (2) If a licensed electronic smoking devices wholesaler distributor or
21 electronic smoking devices wholesaler importer sells the licensee’s electronic smoking
22 devices business and pays to the Executive Director a license assignment fee of \$10, the
23 licensee may assign the license to the buyer of the business if the buyer otherwise qualifies
24 under this title for an electronic smoking devices wholesaler’s distributor or importer
25 license.

26 (b) If the electronic smoking devices business of a licensee is transferred because
27 of bankruptcy, death, incompetency, receivership, or otherwise by operation of law, the
28 Executive Director shall transfer the license without charge to the new owner of the
29 licensee’s business if the transferee otherwise qualifies under this title for the license being
30 transferred.

31 (c) (1) If a licensed electronic smoking devices wholesaler distributor or
32 electronic smoking devices wholesaler importer surrenders the license to the Executive
33 Director and if no disciplinary proceedings are pending against the licensee, the Executive
34 Director shall refund a pro rata portion of the license fee for the unexpired term of the

1 license.

2 (2) A licensed [electronic smoking devices retailer or a licensed] vape shop
3 vendor is not allowed a refund for the unexpired term of the license.

4 16.7–211.

5 (a) A person may not act, attempt to act, or offer to act as an electronic smoking
6 devices manufacturer, [an electronic smoking devices retailer,] an electronic smoking
7 devices wholesaler distributor, an electronic smoking devices wholesaler importer, or a
8 vape shop vendor in the State unless the person has an appropriate license.

9 (b) (1) A person that violates this section is guilty of a misdemeanor and on
10 conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 30 days
11 or both.

12 (2) Each day that a violation of this section continues is a separate offense.

13 16.7–212.

14 (a) (1) The Executive Director shall pay into the General Fund of the State all
15 license fees collected under this title.

16 (2) All license fees collected by the counties under this title are subject to
17 the distribution provisions of § 17–205 of this article.

18 **(3) ALL LICENSE FEES COLLECTED BY THE LOCAL HEALTH**
19 **DEPARTMENT SHALL BE USED TO ENFORCE THE PROVISIONS OF THIS SUBTITLE AND**
20 **THE CLEAN INDOOR ACT.**

21 (b) The General Assembly intends that these license fees be used to administer
22 this title.

23 16.7–213.

24 (a) A person may not ship, import, or sell into or within the State any electronic
25 smoking devices unless the person holds any license required by this subtitle.

26 (b) A person that ships, imports, or sells electronic smoking devices into or within
27 the State:

28 (1) shall comply with any federal and State requirements concerning the
29 placement of warning labels or other information on the containers or individual packages
30 of electronic smoking devices; and

31 (2) shall ensure that the containers or individual packages of electronic
32 smoking devices do not contain any information or markings that are false, misleading, or

1 contrary to:

2 (i) federal trademark laws; or

3 (ii) the trademark law of the State under Title 1, Subtitle 4 of this
4 article.

5 (c) A person that ships, imports, or sells electronic smoking devices into or within
6 the State in violation of this section is subject to disciplinary action by the Executive
7 Director under § 16.7–207 of this subtitle.

8 [16.7–213.1.] **16.7–214.**

9 (a) The Maryland Department of Health may conduct unannounced inspections
10 of licensed retailers to ensure the licensee’s compliance with the provisions of this title and
11 § 10–107 of the Criminal Law Article.

12 (b) The Maryland Department of Health may use an individual under the age of
13 21 years to assist in conducting an inspection under this section.

14 **16.7–215.**

15 (A) **THE EXECUTIVE DIRECTOR OR THE MARYLAND DEPARTMENT OF**
16 **HEALTH MAY TEST AN ELECTRONIC SMOKING DEVICE TO ENSURE THAT IT**
17 **CONTAINS THE INGREDIENTS LISTED IN THE STATEMENT FILED UNDER § 16.7–204**
18 **OF THIS SUBTITLE.**

19 (B) **THE EXECUTIVE DIRECTOR AND THE MARYLAND DEPARTMENT OF**
20 **HEALTH MAY JOINTLY ADOPT REGULATIONS TO ESTABLISH PERMISSIBLE**
21 **INGREDIENTS AND COMPONENTS OF ELECTRONIC SMOKING DEVICES.**

22 [16.7–214.] **16.7–216.**

23 Unless otherwise specified in this title, a person that violates any provision of this
24 title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000
25 or imprisonment not exceeding 30 days or both.

26 **Article – Criminal Law**

27 10–101.

28 (a) In this part the following words have the meanings indicated.

29 (d) (1) “Tobacco product” means a product that is:

30 (i) intended for human inhalation, absorption, ingestion, smoking,

1 heating, chewing, dissolving, or any other manner of consumption that is made of, derived
2 from, or contains:

3 1. tobacco; or

4 2. nicotine; or

5 (ii) an accessory or a component used in any manner of consumption
6 of a product described in item (i) of this paragraph.

7 (2) "Tobacco product" includes:

8 (i) cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and snus;

9 (ii) electronic smoking devices; and

10 (iii) filters, rolling papers, pipes, and liquids used in electronic
11 smoking devices regardless of nicotine content.

12 (3) "Tobacco product" does not include a drug, device, or combination
13 product authorized for sale by the U.S. Food and Drug Administration under the Federal
14 Food, Drug, and Cosmetic Act.

15 10–107.

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

18 (1) contained in a newspaper, magazine, or other type of publication in
19 which the coupon is incidental to the primary purpose of the publication; or

20 (2) sent through the mail.

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

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

26 (ii) a purchaser or recipient who:

27 1. is at least 18 years of age;

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

29 3. presents a valid military identification.

(2) A person who distributes tobacco products for commercial purposes, including a person licensed under Title 16 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) **(1) [In] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, 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.

(2) A VAPE SHOP VENDOR LICENSED UNDER TITLE 16.7 OF THE BUSINESS REGULATION ARTICLE MAY ASSERT THE DEFENSE UNDER THIS SUBSECTION ONLY IF THE VAPE SHOP VENDOR ELECTRONICALLY SCANS THE IDENTIFICATION IN COMPLIANCE WITH § 16.7-204.1 OF THE BUSINESS REGULATION ARTICLE.

Article – Health – General

(a) In this subtitle the following words have the meanings indicated.

(B) “ELECTRONIC SMOKING DEVICE” HAS THE MEANING STATED IN § 16.7–101 OF THE BUSINESS REGULATION ARTICLE.

[(b)] (C) “Employee” has the meaning stated in § 5–101 of the Labor and Employment Article.

[(c)] (D) “Employer” has the meaning stated in § 5–101 of the Labor and Employment Article.

[(d)] (E) “Environmental tobacco smoke” means [the]:

(1) THE complex mixture formed from the escaping smoke of a burning tobacco product or smoke exhaled by the smoker; **OR**

(2) THE COMPLEX MIXTURE FORMED FROM THE ESCAPING VAPOR OF AN ELECTRONIC SMOKING DEVICE OR EXHALED AS ELECTRONIC SMOKING DEVICE VAPOR.

[(e)] (F) “Indoor area open to the public” means:

(1) An indoor area or a portion of an indoor area accessible to the public by either invitation or permission; or

(2) An indoor area of any establishment licensed or permitted under the Alcoholic Beverages Article for the sale or possession of alcoholic beverages.

[(f)] (G) “Place of employment” has the meaning stated in § 5–101 of the Labor and Employment Article.

[(g)] (H) “Smoking” means [the]:

(1) THE burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco; **OR**

(2) THE INHALATION AND EXHALATION OF VAPOR FROM AN ELECTRONIC SMOKING DEVICE.

24–505.

This subtitle does not apply to:

(1) Private homes, residences, including residences used as a business or

1 place of employment, unless being used by a person who is licensed or registered under
2 Title 5, Subtitle 5 of the Family Law Article to provide child care, and private vehicles,
3 unless being used for the public transportation of children, or as part of health care or child
4 care transportation;

5 (2) A hotel or motel room rented to one or more guests as long as the total
6 percent of hotel or motel rooms being so used does not exceed 25%;

7 (3) A retail tobacco business that is a sole proprietorship, limited liability
8 company, corporation, partnership, or other enterprise, in which:

9 (i) The primary activity is the retail sale of tobacco products and
10 accessories; and

11 (ii) The sale of other products is incidental;

12 (4) Any facility of a manufacturer, importer, wholesaler, or distributor of
13 tobacco products **OR ELECTRONIC SMOKING DEVICES** or of any tobacco leaf dealer or
14 processor in which employees of the manufacturer, importer, wholesaler, distributor, or
15 processor work or congregate; or

16 (5) A research or educational laboratory for the purpose of conducting
17 scientific research into the health effects of tobacco smoke.

18 SECTION 2. AND BE IT FURTHER ENACTED, That:

19 (a) In this section, “electronic smoking device” has the meaning stated in §
20 16.7–101 of the Business Regulation Article.

21 (b) It is the intent of the General Assembly that, beginning on January 1, 2022:

22 (1) no person may sell an electronic smoking device through the mail, a
23 computer network, a telephonic network, or another network to consumers in the State;

24 (2) the only consumer sales of electronic smoking devices allowed in the
25 State shall be made by a vape shop vendor, licensed under Title 16.7 of the Business
26 Regulation Article, selling directly to consumers on the premises of the vape shop vendor’s
27 business; and

28 (3) a licensed vape shop vendor may not sell any products that are not
29 electronic smoking devices.

30 SECTION 3. AND BE IT FURTHER ENACTED, That the Executive Director of the
31 Alcohol and Tobacco Commission shall provide notice to:

32 (1) each person with a license issued by the Executive Director under Title
33 16.7 of the Business Regulation Article of the provisions of this Act and on the effect this

1 Act will have on licensees; and

2 (2) each clerk of the circuit court of the provisions of this Act and the effect
3 this Act will have on each person with a license issued by the clerk under Title 16.7 of the
4 Business Regulation Article.

5 SECTION 4. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
6 the application thereof to any person or circumstance is held invalid for any reason in a
7 court of competent jurisdiction, the invalidity does not affect other provisions or any other
8 application of this Act that can be given effect without the invalid provision or application,
9 and for this purpose the provisions of this Act are declared severable.

10 SECTION 5. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take
11 effect January 1, 2022.

12 SECTION 6. AND BE IT FURTHER ENACTED, That, except as provided in Section
13 5 of this Act, this Act shall take effect July 1, 2021.