

SENATE BILL 876

C2, E1, Q4

0lr1592

By: **Senator Feldman**

Introduced and read first time: February 3, 2020

Assigned to: Finance and Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Electronic Smoking Devices – Regulation and Taxation**

3 FOR the purpose of limiting the in-person sales or distributions of vaping liquid by
4 electronic smoking devices retailers and vape shop vendors to age-restricted areas;
5 requiring electronic smoking devices retail licensees and vape shop vendors selling
6 vaping liquid to post a certain sign in a certain manner; prohibiting an electronic
7 smoking devices retailer and a vape shop vendor from selling or distributing an
8 electronic smoking device or vaping liquid that contains more than a certain amount
9 of nicotine per milliliter in any other manner other than in person in an
10 age-restricted area; requiring a certain licensee who sells electronic smoking devices
11 through a website to use a certain third-party age verification service for a certain
12 purpose; prohibiting an electronic smoking devices retailer and a vape shop vendor
13 from selling more than a certain number of electronic smoking devices or a certain
14 number of vaping liquid packages to a consumer through a website; prohibiting a
15 certain licensed person from advertising or marketing certain items to minors;
16 prohibiting the use of certain images in advertising, promoting, packaging, or
17 labeling of certain products; providing that certain advertisements or promotions are
18 a violation against the prohibition on advertising or marketing to certain people;
19 increasing the penalties for certain violations of law pertaining to the distribution of
20 tobacco products to certain persons; requiring the revocation of a license for certain
21 violations in a certain time period; setting the sales and use tax rate for electronic
22 smoking devices; requiring the Governor to include a certain appropriation in the
23 annual budget for certain activities in certain fiscal years; defining certain terms;
24 providing for the effective date of certain provisions of this Act; making a conforming
25 change; and generally relating to the regulation and taxation of electronic smoking
26 devices.

27 BY repealing and reenacting, without amendments,
28 Article – Business Regulation
29 Section 16.7–101(a), (c), and (k) and 16.7–204.1
30 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2015 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – Business Regulation
Amended subtitle designation “Subtitle 2. Electronic Smoking Devices Licenses” to
immediately precede Section 16.7–201
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

BY adding to
Article – Business Regulation
Section 16.7–301 through 16.7–303 to be under the new subtitle “Subtitle 3.
Prohibited Acts – In General”
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 10–107
Annotated Code of Maryland
(2012 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 13–1015
Annotated Code of Maryland
(2019 Replacement Volume)

BY repealing and reenacting, without amendments,
Article – Tax – General
Section 11–104(a)
Annotated Code of Maryland
(2016 Replacement Volume and 2019 Supplement)

BY adding to
Article – Tax – General
Section 11–104(j)
Annotated Code of Maryland
(2016 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 10–107(e)
Annotated Code of Maryland
(2012 Replacement Volume and 2019 Supplement)
(As enacted by Chapter 12 of the Acts of the General Assembly of 2019)

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

Article – Business Regulation

16.7–101.

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

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

(2) “Electronic smoking device” includes:

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

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

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

(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.

Subtitle 2. Electronic [Nicotine Delivery Systems] **SMOKING DEVICES** Licenses.

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”.

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

SUBTITLE 3. PROHIBITED ACTS – IN GENERAL.

16.7–301.

(A) IN THIS SECTION, “AGE-RESTRICTED AREA” MEANS A RETAIL ESTABLISHMENT OR A SPACE WITHIN A RETAIL ESTABLISHMENT INTO WHICH AN INDIVIDUAL MAY NOT ENTER UNLESS THE INDIVIDUAL:

(1) IS AT LEAST 21 YEARS OLD; OR

(2) (I) IS AT LEAST 18 YEARS OLD;

(II) IS AN ACTIVE DUTY MEMBER OF THE MILITARY; AND

(III) PRESENTS A VALID MILITARY IDENTIFICATION.

(B) AN IN-PERSON SALE OR DISTRIBUTION OF VAPING LIQUID BY AN ELECTRONIC SMOKING DEVICES RETAILER OR A VAPE SHOP VENDOR MAY BE MADE ONLY IN AN AGE-RESTRICTED AREA.

(C) AN ELECTRONIC SMOKING DEVICE OR VAPING LIQUID THAT CONTAINS MORE THAN 50 MILLIGRAMS OF NICOTINE PER MILLILITER MAY BE SOLD OR DISTRIBUTED TO A CUSTOMER BY AN ELECTRONIC SMOKING DEVICES RETAILER OR A VAPE SHOP VENDOR ONLY IN AN AGE-RESTRICTED AREA.

(D) IN ADDITION TO THE SIGNAGE REQUIREMENTS UNDER § 16.7–204.1 OF THIS TITLE, AN ELECTRONIC SMOKING DEVICES RETAILER OR A VAPE SHOP VENDOR THAT SELLS OR DISTRIBUTES VAPING LIQUID SHALL POST A SIGN THAT IS CLEARLY VISIBLE TO THE PUBLIC AT THE ENTRANCE OF EACH AGE-RESTRICTED AREA THAT CONTAINS THE FOLLOWING STATEMENTS:

(1) “UNACCOMPANIED MINORS ARE NOT ALLOWED ON THE PREMISES”;

(2) “PRODUCTS ARE NOT FOR SALE TO MINORS”; AND

(3) “UNDERAGE SALES PROHIBITED”.

16.7–302.

(A) A PERSON LICENSED UNDER THIS TITLE THAT SELLS ELECTRONIC

1 SMOKING DEVICES THROUGH A WEBSITE SHALL USE A THIRD-PARTY AGE
2 VERIFICATION SERVICE TO VERIFY THAT A CONSUMER PURCHASING AN
3 ELECTRONIC SMOKING DEVICE IS:

4 (1) AT LEAST 21 YEARS OLD; OR

5 (2) (I) AT LEAST 18 YEARS OLD; AND

6 (II) AN ACTIVE DUTY MEMBER OF THE MILITARY.

7 (B) NOT MORE THAN TWO ELECTRONIC SMOKING DEVICES OR FIVE
8 PACKAGES CONTAINING VAPING LIQUID MAY BE SOLD THROUGH A WEBSITE BY AN
9 ELECTRONIC SMOKING DEVICES RETAILER OR A VAPE SHOP VENDOR IN A SINGLE
10 TRANSACTION.

11 **16.7-303.**

12 (A) A PERSON LICENSED UNDER THIS TITLE MAY NOT DIRECTLY OR
13 INDIRECTLY ADVERTISE OR MARKET ELECTRONIC SMOKING DEVICES OR VAPING
14 LIQUID TO MINORS.

15 (B) IT IS A VIOLATION OF SUBSECTION (A) OF THIS SECTION FOR A PERSON
16 LICENSED UNDER THIS TITLE TO USE ANY OF THE FOLLOWING IN THE ADVERTISING,
17 PROMOTION, PACKAGING, OR LABELING OF AN ELECTRONIC SMOKING DEVICE:

18 (1) A CARTOON;

19 (2) A SUPERHERO;

20 (3) A VIDEO GAME REFERENCE;

21 (4) AN IMAGE OF A FOOD PRODUCT PRIMARILY INTENDED FOR
22 MINORS;

23 (5) A TRADEMARK THAT IMITATES OR MIMICS THE TRADEMARK OF A
24 PRODUCT THAT HAS BEEN ADVERTISED OR MARKETING PRIMARILY TO MINORS;

25 (6) A SYMBOL OR CELEBRITY THAT IS PRIMARILY ASSOCIATED WITH
26 MINORS OR MEDIA PRIMARILY DIRECTED TO MINORS; AND

27 (7) AN IMAGE OF AN INDIVIDUAL WHO APPEARS TO BE UNDER THE
28 AGE OF 27 YEARS.

(C) IT IS A VIOLATION OF SUBSECTION (A) OF THIS SECTION FOR A PERSON LICENSED UNDER THIS TITLE TO ADVERTISE OR PROMOTE AN ELECTRONIC SMOKING DEVICE:

(1) IN A NEWSPAPER, MAGAZINE, PERIODICAL, OR OTHER PUBLICATION FOR WHICH INDIVIDUALS UNDER THE AGE OF 21 YEARS CONSTITUTE 15% OR MORE OF THE TOTAL AUDIENCE, AS MEASURED BY COMPETENT AND RELIABLE SURVEY EVIDENCE;

(2) AT A CONCERT, STADIUM, SPORTING EVENT, OR OTHER PUBLIC EVENT FOR WHICH INDIVIDUALS UNDER THE AGE OF 21 YEARS CONSTITUTE 15% OR MORE OF THE TOTAL AUDIENCE, AS MEASURED BY COMPETENT AND RELIABLE SURVEY EVIDENCE; OR

(3) ON AN OUTDOOR BILLBOARD OR SIGN BOARD THAT IS WITHIN 500 FEET OF A SCHOOL.

Article – Criminal Law

10–107.

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

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

(2) sent through the mail.

(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 of the Business Regulation Article, may not

1 distribute to an individual under the age of 21 years:

- 2 (i) a tobacco product;
- 3 (ii) tobacco paraphernalia; or
- 4 (iii) a coupon redeemable for a tobacco product.

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

6 (1) purchase for or sell a tobacco product to an individual under the age of
7 21 years, unless the individual:

- 8 (i) is at least 18 years of age;
- 9 (ii) is an active duty member of the military; and
- 10 (iii) presents a valid military identification; or

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

- 13 (i) is at least 18 years of age;
- 14 (ii) is an active duty member of the military; and
- 15 (iii) presents a valid military identification.

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

20 (e) (1) A person who violates this section is guilty of a misdemeanor and on
21 conviction is subject to a fine not exceeding:

- 22 (i) \$300 for a first violation;
- 23 (ii) ~~[\$1,000]~~ **\$2,500** for a second violation occurring within 2 years
24 after the first violation; and
- 25 (iii) ~~[\$3,000]~~ **\$5,000** for each subsequent violation occurring within
26 2 years after the preceding violation.

27 **(2) THE COMPTROLLER SHALL REVOKE THE LICENSE OF A PERSON**
28 **LICENSED UNDER TITLE 16, TITLE 16.5, OR TITLE 16.7 OF THE BUSINESS**
29 **REGULATION ARTICLE WHO VIOLATES THIS SECTION FOUR OR MORE TIMES IN A**

24-MONTH PERIOD.

[(2)] (3) Issuance of a civil citation for the sale of a tobacco product to an individual under the age of 21 years precludes a prosecution for a violation of § 24-307 of the Health – General Article arising out of the same violation.

(f) For purposes of this section, each separate incident at a different time and occasion is a violation.

Article – Health – General

13–1015.

(a) For fiscal year 2011 and fiscal year 2012, the Governor shall include at least \$6,000,000 in the annual budget in appropriations for activities aimed at reducing tobacco use in Maryland as recommended by the Centers for Disease Control and Prevention, including:

(1) Media campaigns aimed at reducing smoking initiation and encouraging smokers to quit smoking;

(2) Media campaigns educating the public about the dangers of secondhand smoke exposure;

(3) Enforcement of existing laws banning the sale or distribution of tobacco products to individuals under the age of 21 years;

(4) Promotion and implementation of smoking cessation programs; and

(5) Implementation of school-based tobacco education programs.

(b) **(1)** For fiscal year 2013 and each fiscal year thereafter, the Governor shall include at least \$10,000,000 in the annual budget in appropriations for the purposes described in subsection (a) of this section.

(2) FOR FISCAL YEAR 2022 AND EACH FISCAL YEAR THEREAFTER, THE GOVERNOR SHALL INCLUDE AN APPROPRIATION OF AT LEAST 50% OF THE REVENUE RAISED UNDER § 11-104(J) OF THE TAX – GENERAL ARTICLE IN THE PREVIOUS FISCAL YEAR IN THE ANNUAL BUDGET BILL FOR THE PURPOSES DESCRIBED IN SUBSECTION (A) OF THIS SECTION.

Article – Tax – General

11–104.

(a) Except as otherwise provided in this section, the sales and use tax rate is:

(1) for a taxable price of less than \$1:

(i) 1 cent if the taxable price is 20 cents;

(ii) 2 cents if the taxable price is at least 21 cents but less than 34 cents;

(iii) 3 cents if the taxable price is at least 34 cents but less than 51 cents;

(iv) 4 cents if the taxable price is at least 51 cents but less than 67 cents;

(v) 5 cents if the taxable price is at least 67 cents but less than 84 cents; and

(vi) 6 cents if the taxable price is at least 84 cents; and

(2) for a taxable price of \$1 or more:

(i) 6 cents for each exact dollar; and

(ii) for that part of a dollar in excess of an exact dollar:

1. 1 cent if the excess over an exact dollar is at least 1 cent but less than 17 cents;

2. 2 cents if the excess over an exact dollar is at least 17 cents but less than 34 cents;

3. 3 cents if the excess over an exact dollar is at least 34 cents but less than 51 cents;

4. 4 cents if the excess over an exact dollar is at least 51 cents but less than 67 cents;

5. 5 cents if the excess over an exact dollar is at least 67 cents but less than 84 cents; and

6. 6 cents if the excess over an exact dollar is at least 84 cents.

(J) (1) IN THIS SUBSECTION, “ELECTRONIC SMOKING DEVICE” HAS THE MEANING STATED IN § 16.7–101 OF THE BUSINESS REGULATION ARTICLE.

(2) THE SALES AND USE TAX RATE FOR ELECTRONIC SMOKING

1 **DEVICES IS 12%.**

2 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
3 as follows:

4 **Article – Criminal Law**

5 10–107.

6 (e) (1) A person who violates this section is guilty of a misdemeanor and on
7 conviction is subject to a fine not exceeding:

8 (i) \$300 for a first violation;

9 (ii) ~~[\$1,000]~~ **\$2,500** for a second violation occurring within 2 years
10 after the first violation; and

11 (iii) ~~[\$3,000]~~ **\$5,000** for each subsequent violation occurring within
12 2 years after the preceding violation.

13 **(2) THE ALCOHOL AND TOBACCO COMMISSION SHALL REVOKE THE**
14 **LICENSE OF A PERSON LICENSED UNDER TITLE 16, TITLE 16.5, OR TITLE 16.7 OF**
15 **THE BUSINESS REGULATION ARTICLE WHO VIOLATES THIS SECTION FOUR OR MORE**
16 **TIMES IN A 24–MONTH PERIOD.**

17 ~~[(2)]~~ **(3)** Issuance of a civil citation for the sale of a tobacco product to an
18 individual under the age of 21 years precludes a prosecution for a violation of § 24–307 of
19 the Health – General Article arising out of the same violation.

20 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take
21 effect June 1, 2020, the effective date of Chapter 12 of the Acts of the General Assembly of
22 2019. If the effective date of Chapter 12 is amended, Section 2 of this Act shall take effect
23 on the taking effect of Chapter 12.

24 SECTION 4. AND BE IT FURTHER ENACTED, That, subject to the provisions of
25 Section 3 of this Act, this Act shall take effect June 1, 2020.