

HOUSE BILL 354

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CF 7lr2362

By: **Delegates A. Miller, Barkley, Beidle, Chang, Fraser-Hidalgo, Healey, Jalisi, Korman, Kramer, Lam, Luedtke, Morhaim, Patterson, Pena-Melnyk, Platt, Robinson, Turner, Waldstreicher, and M. Washington**

Introduced and read first time: January 25, 2017

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Clean Indoor Air Act – Use of Electronic Cigarette Devices – Prohibition**

3 FOR the purpose of altering the Clean Indoor Air Act to include a prohibition of the use of
4 a certain electronic cigarette device under certain circumstances; defining a certain
5 term; altering certain definitions; making certain conforming changes; and generally
6 relating to prohibiting the use of electronic cigarette devices under the Clean Indoor
7 Air Act.

8 BY repealing and reenacting, with amendments,
9 Article – Health – General
10 Section 24–501 through 24–503, 24–505, 24–507, and 24–510
11 Annotated Code of Maryland
12 (2015 Replacement Volume and 2016 Supplement)

13 BY repealing and reenacting, without amendments,
14 Article – Health – General
15 Section 24–504 and 24–508
16 Annotated Code of Maryland
17 (2015 Replacement Volume and 2016 Supplement)

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

20 **Article – Health – General**

21 24–501.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(B) (1) “ELECTRONIC CIGARETTE DEVICE” MEANS AN ELECTRONIC DEVICE THAT CAN BE USED TO DELIVER NICOTINE OR ANY OTHER SUBSTANCE INTENDED FOR HUMAN CONSUMPTION TO AN INDIVIDUAL TO SIMULATE SMOKING THROUGH THE INHALATION OF VAPOR OR AEROSOL FROM THE DEVICE.

(2) “ELECTRONIC CIGARETTE DEVICE” INCLUDES AN ELECTRONIC CIGARETTE, CIGAR, CIGARILLO, OR PIPE.

(3) “ELECTRONIC CIGARETTE DEVICE” DOES NOT INCLUDE A PRODUCT APPROVED BY THE U.S. FOOD AND DRUG ADMINISTRATION FOR SALE AS A DRUG DELIVERY OR MEDICAL DEVICE.

[(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 AND VAPOR” means the complex mixture formed from [the]:

(1) THE escaping smoke of a burning tobacco product or smoke exhaled by the smoker; OR

(2) THE ESCAPING VAPOR OR AEROSOL FROM AN ELECTRONIC CIGARETTE DEVICE OR VAPOR OR AEROSOL EXHALED BY THE USER OF THE DEVICE.

[(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 USE OF AN ELECTRONIC CIGARETTE DEVICE.

1 24-502.

2 It is the intent of the General Assembly that the State protect the public and
3 employees from involuntary exposure to environmental tobacco smoke **AND VAPOR** in
4 indoor areas open to the public, indoor places of employment, and certain designated
5 private areas.

6 24-503.

7 The purpose of this subtitle is to preserve and improve the health, comfort, and
8 environment of the people of the State by limiting exposure to environmental tobacco smoke
9 **AND VAPOR**.

10 24-504.

11 Except as provided in § 24-505 of this subtitle, beginning on February 1, 2008, a
12 person may not smoke in:

13 (1) An indoor area open to the public;

14 (2) An indoor place in which meetings are open to the public in accordance
15 with Title 3 of the General Provisions Article;

16 (3) A government-owned or government-operated means of mass
17 transportation including buses, vans, trains, taxicabs, and limousines; or

18 (4) An indoor place of employment.

19 24-505.

20 This subtitle does not apply to:

21 (1) Private homes, residences, including residences used as a business or
22 place of employment, unless being used by a person who is licensed or registered under
23 Title 5, Subtitle 5 of the Family Law Article to provide child care, and private vehicles,
24 unless being used for the public transportation of children, or as part of health care or child
25 care transportation;

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

28 (3) A retail tobacco **OR ELECTRONIC CIGARETTE DEVICE** business that
29 is a sole proprietorship, limited liability company, corporation, partnership, or other
30 enterprise, in which:

31 (i) The primary activity is the retail sale of tobacco products **OR**
32 **ELECTRONIC CIGARETTE DEVICES** and accessories; and

(ii) The sale of other products is incidental;

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

(5) A research or educational laboratory for the purpose of conducting scientific research into the health effects of **ENVIRONMENTAL** tobacco smoke **AND VAPOR**.

24–507.

(a) The Department shall adopt regulations that prohibit environmental tobacco smoke **AND VAPOR** in indoor areas open to the public.

(b) On or before September 30 of each year, the Department shall report, in accordance with § 2–1246 of the State Government Article, to the General Assembly on:

(1) The enforcement efforts of the Department to eliminate environmental tobacco smoke **AND VAPOR** in indoor areas open to the public during the prior year; and

(2) The results of these enforcement efforts.

24–508.

(a) Subject to subsection (c) of this section and except as provided in subsection (d) of this section, a person who violates a provision of this subtitle or a regulation adopted under § 24–507(a) of this subtitle:

(1) For a first violation, shall be issued a written reprimand by the Secretary or the Secretary's designee;

(2) For a second violation, is subject to a civil penalty of \$100; and

(3) For each subsequent violation, is subject to a civil penalty not less than \$250.

(b) The Secretary may waive a penalty established under subsection (a) of this section, giving consideration to factors that include:

(1) The seriousness of the violation; and

(2) Any demonstrated good faith measures to comply with the provisions of this subtitle.

(c) (1) This subsection does not apply to an alleged violation of subsection (d) of this section.

(2) It is an affirmative defense to a complaint brought against a person for a violation of a provision of this subtitle or a regulation adopted under this subtitle that the person or an employee of the person:

(i) Posted a “No Smoking” sign as required under § 24–506 of this subtitle;

(ii) Removed all ashtrays and other smoking paraphernalia from all areas where smoking is prohibited; and

(iii) If the violation occurred in a bar, tavern, or restaurant:

1. Refused to seat or serve any individual who was smoking in a prohibited area; and

2. If the individual continued to smoke after an initial warning, asked the individual to leave the establishment.

(d) An employer who discharges or discriminates against an employee because that employee has made a complaint, has given information to the Department in accordance with this subtitle, has caused to be instituted or is about to cause to be instituted a proceeding under this subtitle, or has testified or is about to testify in a proceeding under this subtitle, shall be deemed in violation of this subtitle and shall be subject to a civil penalty of at least \$2,000 but not more than \$10,000 for each violation.

(e) (1) An employee may not:

(i) Make a groundless or malicious complaint under this subtitle to the Secretary or an authorized representative of the Secretary;

(ii) In bad faith, bring an action under this subtitle; or

(iii) In bad faith, testify in an action under this subtitle or a proceeding that relates to the subject of this subtitle.

(2) The Secretary may bring an action for injunctive relief and damages against a person who violates the provisions of paragraph (1) of this subsection.

(f) A penalty collected by the Secretary under this section shall be paid to the Cigarette Restitution Fund established under § 7–317 of the State Finance and Procurement Article.

24–510.

1 Nothing in this subtitle shall be construed to preempt a county or municipal
2 government from enacting and enforcing more stringent measures to reduce involuntary
3 exposure to environmental tobacco smoke **AND VAPOR**.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2017.