HOUSE BILL 1291

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Introduced and read first time: February 7, 2014

Assigned to: Economic Matters

A BILL ENTITLED

AN ACT concerning

Clean Indoor Air Act - Use of Electronic Smoking Devices - Prohibition

FOR the purpose of altering the definition of "smoking" for purposes of the Clean Indoor Air Act to include the use of an electronic smoking device; defining a certain term; making conforming changes; and generally relating to prohibiting the use of electronic smoking devices under the Clean Indoor Air Act.

BY repealing and reenacting, with amendments,

Article – Health – General

Section 24–501 through 24–503, 24–507, and 24–510

Annotated Code of Maryland

(2009 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, without amendments,

Article - Health - General

Section 24-504 and 24-508

Annotated Code of Maryland

(2009 Replacement Volume and 2013 Supplement)

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

Article - Health - General

24-501.

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



- (B) (1) "ELECTRONIC SMOKING DEVICE" MEANS AN ELECTRONIC DEVICE THAT CAN BE USED TO DELIVER NICOTINE OR OTHER SUBSTANCES TO THE INDIVIDUAL INHALING FROM THE DEVICE.
- (2) "ELECTRONIC SMOKING DEVICE" INCLUDES AN ELECTRONIC CIGARETTE, CIGAR, CIGARILLO, OR PIPE.
- [(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 OR NICOTINE smoke" 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 SMOKE OR VAPOR FROM AN ELECTRONIC SMOKING DEVICE OR SMOKE OR VAPOR EXHALED BY THE SMOKER.
 - [(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 Article 2B of the Code 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 SMOKING DEVICE.

24 - 502.

It is the intent of the General Assembly that the State protect the public and employees from involuntary exposure to environmental tobacco **OR NICOTINE** smoke

in indoor areas open to the public, indoor places of employment, and certain designated private areas.

24 - 503.

The purpose of this subtitle is to preserve and improve the health, comfort, and environment of the people of the State by limiting exposure to environmental tobacco **OR NICOTINE** smoke.

24 - 504.

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

- (1) An indoor area open to the public;
- (2) An indoor place in which meetings are open to the public in accordance with Title 10, Subtitle 5 of the State Government Article;
- (3) A government—owned or government—operated means of mass transportation including buses, vans, trains, taxicabs, and limousines; or
 - (4) An indoor place of employment.

24 - 507.

- (a) The Department shall adopt regulations that prohibit environmental tobacco **OR NICOTINE** smoke in indoor areas open to the public.
- (b) On or before September 30 of each year, the Department shall report, in accordance with $\S 2-1246$ of the State Government Article, to the General Assembly on:
- (1) The enforcement efforts of the Department to eliminate environmental tobacco **OR NICOTINE** smoke 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 $\S 24-506$ 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.

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.