

# HOUSE BILL 26

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HB 1291/14 – ECM

(PRE-FILED)

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By: **Delegate A. Miller**

Requested: November 19, 2014

Introduced and read first time: January 14, 2015

Assigned to: Economic Matters

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## 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 certain 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 2014 Supplement)

BY repealing and reenacting, without amendments,  
Article – Health – General  
Section 24–504 and 24–508  
Annotated Code of Maryland  
(2009 Replacement Volume and 2014 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.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



**(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 3 of the General Provisions 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 § 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 § 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, 2015.