SENATE BILL 7

J1 5lr0549
(PRE–FILED) CF 5lr1340

By: ~~Senator Middleton~~ **Senators Middleton, Benson, Feldman, Kelley, Klausmeier, Montgomery, Pugh, Reilly, and Waugh**
Requested: November 6, 2014
Introduced and read first time: January 14, 2015
Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: February 6, 2015

CHAPTER _____

AN ACT concerning

Electronic Cigarettes – Sale to Minors – Components, Supplies, and Enforcement

FOR the purpose of clarifying that the prohibition against selling, distributing, or offering for sale a certain electronic device to a minor that can be used to deliver nicotine includes any component for the device or product used to refill or resupply the device; clarifying that the exception to the prohibition for devices approved by the United States Food and Drug Administration applies only to devices for sale as a certain tobacco cessation product; ~~changing a violation of the prohibition from a misdemeanor to a civil infraction;~~ establishing certain civil penalties; providing that a sworn law enforcement officer, county health officer, or a designee of a county health officer may issue a certain civil citation for a violation of this Act; providing requirements for processing a certain citation; providing for a certain election to stand trial; ~~authorizing a certain prosecution; authorizing the District Court to access certain costs;~~ requiring the District Court to remit certain collected penalties in a certain manner; clarifying that the adjudication of a violation of this Act is not a criminal conviction for any purpose; defining a certain term; and generally relating to electronic cigarettes.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 24–305
Annotated Code of Maryland

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

(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

24–305.

(a) This section does not apply to a tobacco product that is regulated under Title 16 of the Business Regulation Article.

(b) (1) Except as provided in paragraph (2) of this subsection, a person may not sell, distribute, or offer for sale to a minor an electronic device**, A COMPONENT FOR AN ELECTRONIC DEVICE, OR A PRODUCT USED TO REFILL OR RESUPPLY AN ELECTRONIC DEVICE** that can be used to deliver nicotine to the individual inhaling from the device, including an electronic cigarette, cigar, cigarillo, or pipe.

(2) This subsection does not apply to a nicotine device that contains or delivers nicotine intended for human consumption if the device has been approved by the United States Food and Drug Administration **FOR SALE AS A TOBACCO CESSATION PRODUCT AND IS BEING MARKETED AND SOLD SOLELY FOR THIS PURPOSE**.

(c) A person that violates this section [is guilty of a misdemeanor and on conviction] is subject to a [fine not exceeding $1,000 for each violation] **OR A CIVIL PENALTY OF:**

(1) EXCEPT AS PROVIDED IN ITEM (2) OF THIS SUBSECTION, $300; AND

(2) $500 FOR ANY VIOLATION OCCURRING WITHIN 24 MONTHS AFTER A PREVIOUS VIOLATION.

(d) 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 an employer, government unit, or institution of higher education that positively identified the purchaser or recipient as at least 18 years of age.

(E) (1) IN THIS SUBSECTION, "DESIGNEE" MEANS A RETIRED SWORN LAW ENFORCEMENT OFFICER EMPLOYED BY A COUNTY HEALTH OFFICER OR AN EMPLOYEE OF A LOCAL HEALTH DEPARTMENT TRAINED IN CIVIL ENFORCEMENT.

(2) A SWORN LAW ENFORCEMENT OFFICER, A COUNTY HEALTH OFFICER, OR A DESIGNEE OF A COUNTY HEALTH OFFICER MAY ISSUE A CIVIL CITATION FOR A VIOLATION OF THIS SECTION.

~~(2)~~ (3) A CITATION ISSUED UNDER THIS SECTION SHALL INCLUDE:

(I) THE NAME AND ADDRESS OF THE PERSON CHARGED;

(II) THE NATURE OF THE VIOLATION;

(III) THE LOCATION AND TIME OF THE VIOLATION;

(IV) THE AMOUNT OF THE CIVIL PENALTY;

(V) THE MANNER, LOCATION, AND TIME IN WHICH THE CIVIL PENALTY MAY BE PAID;

(VI) A NOTICE STATING THE PERSON'S RIGHT TO ELECT TO STAND TRIAL FOR THE VIOLATION; AND

(VII) A WARNING THAT FAILURE TO PAY THE CIVIL PENALTY OR TO CONTEST LIABILITY IN A TIMELY MANNER IN ACCORDANCE WITH THE CITATION:

1. IS AN ADMISSION OF LIABILITY; AND

2. MAY RESULT IN ENTRY OF A DEFAULT JUDGMENT THAT MAY INCLUDE THE CIVIL PENALTY, COURT COSTS, AND ADMINISTRATIVE EXPENSES.

~~(3)~~ (4) THE SWORN LAW ENFORCEMENT OFFICER, COUNTY HEALTH OFFICER, OR DESIGNEE SHALL RETAIN A COPY OF THE CITATION ISSUED UNDER THIS SECTION.

~~(4)~~ (5) (I) 1. A PERSON WHO RECEIVES A CITATION FROM A COUNTY HEALTH OFFICER OR DESIGNEE UNDER THIS SECTION MAY ELECT TO STAND TRIAL FOR THE VIOLATION BY FILING A NOTICE OF INTENTION TO STAND TRIAL WITH THE COUNTY HEALTH OFFICER OR DESIGNEE AT LEAST 5 DAYS BEFORE THE DATE SET IN THE CITATION FOR THE PAYMENT OF THE CIVIL PENALTY.

2. AFTER RECEIVING A NOTICE OF INTENTION TO STAND TRIAL UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH, THE COUNTY HEALTH OFFICER OR DESIGNEE SHALL FORWARD THE NOTICE AND A COPY OF THE CITATION TO THE DISTRICT COURT.

(II) A PERSON WHO RECEIVES A CITATION FROM A SWORN LAW ENFORCEMENT OFFICER UNDER THIS SECTION MAY ELECT TO STAND TRIAL FOR THE VIOLATION BY FILING A NOTICE OF INTENTION TO STAND TRIAL AND A COPY OF

THE CITATION WITH THE DISTRICT COURT AT LEAST 5 DAYS BEFORE THE DATE SET IN THE CITATION FOR PAYMENT OF THE CIVIL PENALTY.

~~(5)~~ (6) (I) AFTER RECEIVING A CITATION AND NOTICE UNDER THIS SECTION, THE DISTRICT COURT SHALL SCHEDULE THE CASE FOR TRIAL AND NOTIFY THE DEFENDANT OF THE TRIAL DATE.

(II) IN A PROCEEDING BEFORE THE DISTRICT COURT, A VIOLATION OF THIS SECTION SHALL BE PROSECUTED IN THE SAME MANNER AND TO THE SAME EXTENT AS A MUNICIPAL INFRACTION UNDER §§ 6–108 THROUGH 6–115 OF THE LOCAL GOVERNMENT ARTICLE.

~~(III) THE GOVERNING BODY OF THE COUNTY IN WHICH THE VIOLATION OCCURRED MAY AUTHORIZE THE COUNTY ATTORNEY TO PROSECUTE A CIVIL INFRACTION UNDER THIS SECTION.~~

~~(6)~~ (7) ~~(I) IF THE DISTRICT COURT FINDS THAT A PERSON HAS COMMITTED A CIVIL INFRACTION UNDER THIS SECTION, THE COURT MAY ASSESS THE COSTS OF THE PROCEEDINGS AGAINST THE PERSON.~~

~~(II)~~ THE DISTRICT COURT SHALL REMIT ANY PENALTIES COLLECTED FOR A VIOLATION OF THIS SECTION TO THE COUNTY IN WHICH THE VIOLATION OCCURRED.

~~(7)~~ (8) ADJUDICATION OF A VIOLATION OF THIS SECTION IS NOT A CRIMINAL CONVICTION FOR ANY PURPOSE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2015.

Approved:

_____

Governor.

_____

President of the Senate.

_____

Speaker of the House of Delegates.