

HOUSE BILL 1094

J1, E1

8lr3417

By: **Delegates Rosenberg and Waldstreicher**

Introduced and read first time: February 7, 2018

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Distribution of Electronic Cigarettes to Minors – Prohibition and Penalties**

3 FOR the purpose of prohibiting under criminal law a person that distributes tobacco
4 products for commercial purposes from distributing to a minor an electronic nicotine
5 delivery system; prohibiting under criminal law certain persons from purchasing for
6 or selling an electronic nicotine delivery system to a minor; establishing a certain
7 criminal penalty for distributing certain electronic nicotine delivery systems to a
8 minor; prohibiting under criminal law certain minors from using, possessing,
9 obtaining, or attempting to obtain an electronic nicotine delivery system; providing
10 that a conviction for a violation of certain provisions of law precludes a proceeding
11 for a certain civil penalty arising out of the same violation; altering certain civil
12 penalties associated with distributing certain electronic nicotine delivery systems to
13 a minor; providing that enforcement of a certain civil penalty precludes a prosecution
14 for a violation of certain provisions of law arising out of the same violation; correcting
15 a cross-reference; and generally relating to the distribution of electronic cigarettes
16 to minors.

17 BY repealing and reenacting, without amendments,
18 Article – Business Regulation
19 Section 16.7–101(a) and (c)
20 Annotated Code of Maryland
21 (2015 Replacement Volume and 2017 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Criminal Law
24 Section 10–107 and 10–108
25 Annotated Code of Maryland
26 (2012 Replacement Volume and 2017 Supplement)

27 BY repealing and reenacting, without amendments,
28 Article – Health – General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 24–305(a) and (b)
2 Annotated Code of Maryland
3 (2015 Replacement Volume and 2017 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article – Health – General
6 Section 24–305(c)
7 Annotated Code of Maryland
8 (2015 Replacement Volume and 2017 Supplement)

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

11 Article – Business Regulation

12 16.7–101.

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

14 (c) (1) “Electronic nicotine delivery system” means an electronic device, a
15 component for an electronic device, or a product used to refill or resupply an electronic
16 device that can be used to deliver nicotine to an individual inhaling from the device.

17 (2) “Electronic nicotine delivery system” includes an electronic cigarette,
18 an electronic cigar, an electronic cigarillo, an electronic pipe, and vaping liquid.

19 (3) “Electronic nicotine delivery system” does not include:

20 (i) a nicotine device that contains or delivers nicotine intended for
21 human consumption if the device has been approved by the United States Food and Drug
22 Administration for sale as a tobacco cessation product and is being marketed and sold solely
23 for that purpose;

24 (ii) cannabis oil or any other unlawful substance; or

25 (iii) an electronic device that is being used to deliver cannabis oil or
26 another unlawful substance.

27 Article – Criminal Law

28 10–107.

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

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

1 (2) sent through the mail.

2 (b) (1) This subsection does not apply to the distribution of a tobacco product
3 [or], tobacco paraphernalia, **OR AN ELECTRONIC NICOTINE DELIVERY SYSTEM** to a
4 minor who is acting solely as the agent of the minor's employer if the employer distributes
5 tobacco products [or], tobacco paraphernalia, **OR ELECTRONIC NICOTINE DELIVERY**
6 **SYSTEMS** for commercial purposes.

7 (2) A person who distributes tobacco products for commercial purposes,
8 including a person licensed under Title 16 of the Business Regulation Article, may not
9 distribute to a minor:

10 (i) a tobacco product;

11 (ii) tobacco paraphernalia; [or]

12 (iii) a coupon redeemable for a tobacco product; **OR**

13 **(IV) AN ELECTRONIC NICOTINE DELIVERY SYSTEM, AS DEFINED**
14 **IN § 16.7–101 OF THE BUSINESS REGULATION ARTICLE.**

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

16 (1) purchase for or sell a tobacco product **OR AN ELECTRONIC NICOTINE**
17 **DELIVERY SYSTEM** to a minor; or

18 (2) distribute tobacco paraphernalia to a minor.

19 (d) In a prosecution for a violation of this section, it is a defense that the defendant
20 examined the purchaser's or recipient's driver's license or other valid identification issued
21 by an employer, government unit, or institution of higher education that positively
22 identified the purchaser or recipient as at least 18 years of age.

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

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

26 (ii) \$1,000 for a second violation occurring within 2 years after the
27 first violation; and

28 (iii) \$3,000 for each subsequent violation occurring within 2 years
29 after the preceding violation.

30 (2) Enforcement of a civil penalty for a violation of this section precludes a

1 prosecution for a violation of [this section] **§ 24–305 OR § 24–307 OF THE HEALTH –**
2 **GENERAL ARTICLE** arising out of the same violation.

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

5 10–108.

6 (a) In this section, “violation” has the meaning stated in § 3–8A–01 of the Courts
7 Article.

8 (b) This section does not apply to the possession of a tobacco product [or],
9 cigarette rolling paper, **OR AN ELECTRONIC NICOTINE DELIVERY SYSTEM** by a minor
10 who is acting as the agent of the minor’s employer within the scope of employment.

11 (c) A minor may not:

12 (1) use or possess a tobacco product [or], cigarette rolling paper, **OR AN**
13 **ELECTRONIC NICOTINE DELIVERY SYSTEM**; or

14 (2) obtain or attempt to obtain a tobacco product [or], cigarette rolling
15 paper, **OR AN ELECTRONIC NICOTINE DELIVERY SYSTEM** by using a form of
16 identification that:

17 (i) is falsified; or

18 (ii) identifies an individual other than the minor.

19 (d) (1) A violation of this section is a civil offense.

20 (2) A minor who violates this section is subject to the procedures and
21 dispositions provided in Title 3, Subtitle 8A of the Courts Article.

22 (e) A law enforcement officer authorized to make arrests shall issue a citation to
23 a minor if the law enforcement officer has probable cause to believe that the minor is
24 committing or has committed a violation of this section.

25 **Article – Health – General**

26 24–305.

27 (a) This section does not apply to a tobacco product that is regulated under Title
28 16 of the Business Regulation Article.

29 (b) (1) Except as provided in paragraph (2) of this subsection, a person may
30 not sell, distribute, or offer for sale to a minor an electronic nicotine delivery system, as

1 defined in § 16.7–101(c) of the Business Regulation Article.

2 (2) This subsection does not apply to an electronic nicotine delivery system
3 that contains or delivers nicotine intended for human consumption if the device has been
4 approved by the United States Food and Drug Administration for sale as a tobacco cessation
5 product and is being marketed and sold solely for this purpose.

6 (c) **(1)** A person that violates this section is subject to a civil penalty [of] **NOT**
7 **EXCEEDING:**

8 **[(1)] (I)** [Except as provided in item (2) of this subsection,] **\$300 FOR A**
9 **FIRST VIOLATION; [and]**

10 **[(2)] (II)** **[\$500] \$1,000** for [any] **A SECOND** violation occurring within 24
11 months after [a previous] **THE FIRST** violation; **AND**

12 **(III) \$3,000 FOR EACH SUBSEQUENT VIOLATION OCCURRING**
13 **WITHIN 24 MONTHS AFTER THE PRECEDING VIOLATION.**

14 **(2) A CONVICTION FOR A VIOLATION OF THIS SECTION PRECLUDES A**
15 **PROCEEDING FOR A CIVIL PENALTY UNDER § 10–107 OF THE CRIMINAL LAW**
16 **ARTICLE ARISING OUT OF THE SAME VIOLATION.**

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2018.