

Chapter 785

(House Bill 1094)

AN ACT concerning

Distribution of Electronic Cigarettes to Minors – Prohibition and Penalties

FOR the purpose of prohibiting under criminal law a person that distributes tobacco products for commercial purposes from distributing to a minor an electronic nicotine delivery system; prohibiting under criminal law certain persons from purchasing for or selling an electronic nicotine delivery system to a minor; establishing a certain criminal penalty for distributing certain electronic nicotine delivery systems to a minor; prohibiting under criminal law certain minors from using, possessing, obtaining, or attempting to obtain an electronic nicotine delivery system; providing that a conviction for a violation of certain provisions of law precludes a proceeding for a certain civil penalty arising out of the same violation; altering certain civil penalties associated with distributing certain electronic nicotine delivery systems to a minor; providing that enforcement of a certain civil penalty precludes a prosecution for a violation of certain provisions of law arising out of the same violation; authorizing certain law enforcement officers to issue a civil citation to a person who distributes certain tobacco products to a minor; correcting a cross-reference; making certain technical corrections; and generally relating to the distribution of electronic cigarettes to minors.

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

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

BY repealing and reenacting, without amendments,
Article – Health – General
Section 24–305(a) and (b) and 24–307(b) and (e)(1)
Annotated Code of Maryland
(2015 Replacement Volume and 2017 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 24–305(c) and 24–307(c) and (e)(2)
Annotated Code of Maryland

(2015 Replacement Volume and 2017 Supplement)

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

Article – Business Regulation

16.7–101.

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

(c) (1) “Electronic nicotine delivery system” means 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 an individual inhaling from the device.

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

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

(i) 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 that purpose;

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

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

Article – Criminal Law

10–107.

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

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

(2) sent through the mail.

(b) (1) This subsection does not apply to the distribution of a tobacco product [or], tobacco paraphernalia, **OR AN ELECTRONIC NICOTINE DELIVERY SYSTEM** to a minor who is acting solely as the agent of the minor’s employer if the employer distributes

tobacco products [or], tobacco paraphernalia, **OR ELECTRONIC NICOTINE DELIVERY SYSTEMS** for commercial purposes.

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

- (i) a tobacco product;
- (ii) tobacco paraphernalia; [or]
- (iii) a coupon redeemable for a tobacco product; **OR**

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

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

- (1) purchase for or sell a tobacco product **OR AN ELECTRONIC NICOTINE DELIVERY SYSTEM** to a minor; or
- (2) distribute tobacco paraphernalia to a minor.

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

- (i) \$300 for a first violation;
- (ii) \$1,000 for a second violation occurring within 2 years after the first violation; and
- (iii) \$3,000 for each subsequent violation occurring within 2 years after the preceding violation.

(2) ~~Enforcement of a civil penalty for a violation of this section~~ **ISSUANCE OF A CIVIL CITATION FOR THE SALE OF A TOBACCO PRODUCT OR AN ELECTRONIC NICOTINE DELIVERY SYSTEM TO A MINOR** precludes a prosecution for a violation of ~~this section, § 24–305 or § 24–307 of the Health General Article~~ arising out of the same violation.

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

10–108.

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

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

(c) A minor may not:

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

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

(i) is falsified; or

(ii) identifies an individual other than the minor.

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

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

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

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 nicotine delivery system, as defined in § 16.7–101(c) of the Business Regulation Article.

(2) This subsection does not apply to an electronic nicotine delivery system 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) (1) A person that violates this section is subject to a civil penalty [of] **NOT EXCEEDING:**

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

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

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

(2) ~~A CONVICTION~~ **ISSUANCE OF A CIVIL CITATION FOR A VIOLATION OF THIS SECTION PRECLUDES A PROCEEDING FOR A CIVIL PENALTY PROSECUTION UNDER § 10-107 OF THE CRIMINAL LAW ARTICLE ARISING OUT OF THE SAME VIOLATION.**

24-307.

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

(1) A tobacco product;

(2) Tobacco paraphernalia; or

(3) A coupon redeemable for a tobacco product.

(c) (1) A person who violates subsection (b) of this section is subject to a civil penalty not exceeding:

(i) \$300 for a first violation;

(ii) \$1,000 for a second violation occurring within 24 months after the first violation; and

(iii) \$3,000 for each subsequent violation occurring within 24 months after the preceding violation.

(2) The local health departments shall report violations of subsection (b) of this section to the Comptroller's Office.

(3) [A conviction] ISSUANCE OF A CIVIL CITATION for a violation of this section precludes [a proceeding for a civil penalty] PROSECUTION under [§ 24–307 of the Health – General] § 10–107 OF THE CRIMINAL LAW Article arising out of the same violation.

(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 subsection (b) of this section.

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

Approved by the Governor, May 15, 2018.