

SENATE BILL 378

E1, J1

9lr0931

By: **Senators Kelley, Augustine, Beidle, Benson, Eckardt, Ellis, Guzzone, Kramer, Lam, Peters, Rosapepe, Waldstreicher, West, and Young**

Introduced and read first time: January 31, 2019

Assigned to: Finance and Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Tobacco Products and Electronic Nicotine Delivery Systems – Minimum Age**
3 **and Civil Fines**

4 FOR the purpose of altering certain provisions of law to prohibit a certain person from
5 distributing a certain tobacco product or electronic nicotine delivery system to an
6 individual under a certain age, rather than to a minor; prohibiting a person from
7 distributing a certain tobacco product or electronic nicotine delivery system without
8 first examining certain identification of a certain purchaser or recipient for a certain
9 purpose; defining certain terms; making conforming changes; and generally relating
10 to tobacco products and electronic nicotine delivery systems.

11 BY repealing and reenacting, with amendments,
12 Article – Criminal Law
13 Section 10–107
14 Annotated Code of Maryland
15 (2012 Replacement Volume and 2018 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Health – General
18 Section 13–1015 and 24–305
19 Annotated Code of Maryland
20 (2015 Replacement Volume and 2018 Supplement)

21 BY repealing
22 Article – Health – General
23 Section 24–307
24 Annotated Code of Maryland
25 (2015 Replacement Volume and 2018 Supplement)

26 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – State Finance and Procurement
2 Section 7–317
3 Annotated Code of Maryland
4 (2015 Replacement Volume and 2018 Supplement)

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

7 **Article – Criminal Law**

8 10–107.

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

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

13 (2) sent through the mail.

14 (b) (1) This subsection does not apply to the distribution of a tobacco product,
15 tobacco paraphernalia, or electronic nicotine delivery system to [a minor] **AN INDIVIDUAL**
16 **UNDER THE AGE OF 21 YEARS** who is acting solely as the agent of the [minor's]
17 **INDIVIDUAL'S** employer if the employer distributes tobacco products, tobacco
18 paraphernalia, or electronic nicotine delivery systems for commercial purposes.

19 (2) A person who distributes tobacco products for commercial purposes,
20 including a person licensed under Title 16 of the Business Regulation Article, may not
21 distribute to [a minor] **AN INDIVIDUAL UNDER THE AGE OF 21 YEARS**:

22 (i) a tobacco product;

23 (ii) tobacco paraphernalia;

24 (iii) a coupon redeemable for a tobacco product; or

25 (iv) an electronic nicotine delivery system, as defined in § 16.7–101
26 of the Business Regulation Article.

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

28 (1) purchase for or sell a tobacco product or an electronic nicotine delivery
29 system to [a minor] **AN INDIVIDUAL UNDER THE AGE OF 21 YEARS**; or

30 (2) distribute tobacco paraphernalia to [a minor] **AN INDIVIDUAL UNDER**
31 **THE AGE OF 21 YEARS**.

1 **(D) A PERSON MAY NOT DISTRIBUTE A TOBACCO PRODUCT, TOBACCO**
2 **PARAPHERNALIA, OR AN ELECTRONIC NICOTINE DELIVERY SYSTEM WITHOUT FIRST**
3 **EXAMINING THE GOVERNMENT-ISSUED PHOTOGRAPHIC IDENTIFICATION OF A**
4 **PROSPECTIVE PURCHASER OR RECIPIENT WHOM THE DISTRIBUTOR REASONABLY**
5 **BELIEVES TO BE UNDER THE AGE OF 30 YEARS IN ORDER TO DETERMINE THE DATE**
6 **OF BIRTH OF THE PROSPECTIVE PURCHASER OR RECIPIENT.**

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

11 **[(e)] (F)** (1) A person who violates this section is guilty of a misdemeanor and
12 on conviction is subject to a fine not exceeding:

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

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

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

18 (2) Issuance of a civil citation for the sale of a tobacco product or an
19 electronic nicotine delivery system to a minor precludes a prosecution for a violation of §
20 24–307 of the Health – General Article arising out of the same violation.

21 **[(f)] (G)** For purposes of this section, each separate incident at a different time
22 and occasion is a violation.

23 **Article – Health – General**

24 13–1015.

25 (a) For fiscal year 2011 and fiscal year 2012, the Governor shall include at least
26 \$6,000,000 in the annual budget in appropriations for activities aimed at reducing tobacco
27 use in Maryland as recommended by the Centers for Disease Control and Prevention,
28 including:

29 (1) Media campaigns aimed at reducing smoking initiation and
30 encouraging smokers to quit smoking;

31 (2) Media campaigns educating the public about the dangers of secondhand
32 smoke exposure;

1 (3) Enforcement of existing laws banning the sale or distribution of tobacco
2 products to [minors] **INDIVIDUALS UNDER THE AGE OF 21 YEARS;**

3 (4) Promotion and implementation of smoking cessation programs; and

4 (5) Implementation of school-based tobacco education programs.

5 (b) For fiscal year 2013 and each fiscal year thereafter, the Governor shall include
6 at least \$10,000,000 in the annual budget in appropriations for the purposes described in
7 subsection (a) of this section.

8 24–305.

9 [(a) This section does not apply to a tobacco product that is regulated under Title
10 16 of the Business Regulation Article.]

11 (A) (1) **IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
12 **INDICATED.**

13 (2) **“DISTRIBUTE” MEANS TO:**

14 (I) **GIVE, SELL, DELIVER, DISPENSE, ISSUE, OR OFFER TO GIVE,**
15 **SELL, DELIVER, DISPENSE, OR ISSUE; OR**

16 (II) **CAUSE OR HIRE A PERSON TO GIVE, SELL, DELIVER,**
17 **DISPENSE, ISSUE OR OFFER TO GIVE, SELL, DELIVER, DISPENSE, OR ISSUE.**

18 (3) **“ELECTRONIC NICOTINE DELIVERY SYSTEM” HAS THE MEANING**
19 **STATED IN § 16.7–101 OF THE BUSINESS REGULATION ARTICLE.**

20 (4) **“TOBACCO PARAPHERNALIA” HAS THE MEANING STATED IN §**
21 **10–101 OF THE CRIMINAL LAW ARTICLE.**

22 (5) **“TOBACCO PRODUCT” HAS THE MEANING STATED IN §**
23 **10–101 OF THE CRIMINAL LAW ARTICLE.**

24 (b) [(1) Except as provided in paragraph (2) of this subsection, a] **A person may**
25 **not sell, distribute, or offer for sale [to a minor] A TOBACCO PRODUCT, TOBACCO**
26 **PARAPHERNALIA, OR an electronic nicotine delivery system[, as defined in § 16.7–101(c)**
27 **of the Business Regulation Article] TO AN INDIVIDUAL UNDER THE AGE OF 21 YEARS.**

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

1 (c) (1) A person that violates this section is subject to a civil penalty not
2 exceeding:

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

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

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

8 (2) Issuance of a civil citation for a violation of this section precludes
9 prosecution under § 10–107 of the Criminal Law Article arising out of the same violation.

10 **(D) A PERSON MAY NOT SELL, DISTRIBUTE, OR OFFER FOR SALE A TOBACCO**
11 **PRODUCT, TOBACCO PARAPHERNALIA, OR AN ELECTRONIC NICOTINE DELIVERY**
12 **SYSTEM WITHOUT FIRST EXAMINING THE GOVERNMENT–ISSUED PHOTOGRAPHIC**
13 **IDENTIFICATION OF A PROSPECTIVE PURCHASER OR RECIPIENT WHOM THE**
14 **DISTRIBUTOR REASONABLY BELIEVES TO BE UNDER THE AGE OF 30 YEARS IN**
15 **ORDER TO DETERMINE THE DATE OF BIRTH OF THE PROSPECTIVE PURCHASER OR**
16 **RECIPIENT.**

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

21 **[(e)] (F)** (1) In this subsection, “designee” means a retired sworn law
22 enforcement officer employed by a county health officer or an employee of a local health
23 department trained in civil enforcement.

24 (2) A sworn law enforcement officer, a county health officer, or a designee
25 of a county health officer may issue a civil citation for a violation of this section.

26 (3) A citation issued under this section shall include:

27 (i) The name and address of the person charged;

28 (ii) The nature of the violation;

29 (iii) The location and time of the violation;

30 (iv) The amount of the civil penalty;

31 (v) The manner, location, and time in which the civil penalty may be

1 paid;

2 (vi) A notice stating the person's right to elect to stand trial for the
3 violation; and

4 (vii) A warning that failure to pay the civil penalty or to contest
5 liability in a timely manner in accordance with the citation:

6 1. Is an admission of liability; and

7 2. May result in entry of a default judgment that may include
8 the civil penalty, court costs, and administrative expenses.

9 (4) The sworn law enforcement officer, county health officer, or designee
10 shall retain a copy of the citation issued under this section.

11 (5) (i) 1. A person who receives a citation from a county health
12 officer or designee under this section may elect to stand trial for the violation by filing a
13 notice of intention to stand trial with the county health officer or designee at least 5 days
14 before the date set in the citation for the payment of the civil penalty.

15 2. After receiving a notice of intention to stand trial under
16 subparagraph 1 of this subparagraph, the county health officer or designee shall
17 forward the notice and a copy of the citation to the District Court.

18 (ii) A person who receives a citation from a sworn law enforcement
19 officer under this section may elect to stand trial for the violation by filing a notice of
20 intention to stand trial and a copy of the citation with the District Court at least 5 days
21 before the date set in the citation for payment of the civil penalty.

22 (6) (i) After receiving a citation and notice under this section, the
23 District Court shall schedule the case for trial and notify the defendant of the trial date.

24 (ii) In a proceeding before the District Court, a violation of this
25 section shall be prosecuted in the same manner and to the same extent as a municipal
26 infraction under §§ 6–108 through 6–115 of the Local Government Article.

27 (7) The District Court shall remit any penalties collected for a violation of
28 this section to the county in which the violation occurred.

29 (8) Adjudication of a violation of this section is not a criminal conviction for
30 any purpose.

31 [24–307.

32 (a) (1) This section does not apply to the distribution of a coupon that is
33 redeemable for a tobacco product if the coupon is:

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

3 (ii) Sent through the mail.

4 (2) This section does not apply to the distribution of a tobacco product or
5 tobacco paraphernalia to a minor who is acting solely as the agent of the minor's employer
6 if the employer distributes tobacco products or tobacco paraphernalia for commercial
7 purposes.

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

11 (1) A tobacco product;

12 (2) Tobacco paraphernalia; or

13 (3) A coupon redeemable for a tobacco product.

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

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

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

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

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

23 (3) Issuance of a civil citation for a violation of this section precludes
24 prosecution under § 10–107 of the Criminal Law Article arising out of the same violation.

25 (d) In a prosecution for a violation of subsection (b) of this section, it is a defense
26 that the defendant examined the purchaser's or recipient's driver's license or other valid
27 identification issued by an employer, a governmental unit, or an institution of higher
28 education that positively identified the purchaser or recipient as at least 18 years old.

29 (e) (1) In this subsection, "designee" means a retired sworn law enforcement
30 officer employed by a county health officer or an employee of a local health department
31 trained in civil enforcement.

1 (2) A sworn law enforcement officer, a county health officer, or a designee
2 of a county health officer may issue a civil citation for a violation of subsection (b) of this
3 section.

4 (3) A citation issued under this subsection shall include:

5 (i) The name and address of the person charged;

6 (ii) The nature of the violation;

7 (iii) The location and time of the violation;

8 (iv) The amount of the civil penalty;

9 (v) The manner, location, and time in which the civil penalty may be
10 paid;

11 (vi) A notice stating the person's right to elect to stand trial for the
12 violation; and

13 (vii) A warning that failure to pay the civil penalty or to contest
14 liability in a timely manner in accordance with the citation:

15 1. Is an admission of liability; and

16 2. May result in entry of a default judgment that may include
17 the civil penalty, court costs, and administrative expenses.

18 (4) The county health officer or designee shall retain a copy of the citation
19 issued under this subsection.

20 (5) (i) A person who receives a citation from a county health officer or
21 designee under this subsection may elect to stand trial for the violation by filing a notice of
22 intention to stand trial with the county health officer or designee at least 5 days before the
23 date set in the citation for the payment of the civil penalty.

24 (ii) After receiving a notice of intention to stand trial under
25 subparagraph (i) of this paragraph, the county health officer or designee shall forward the
26 notice and a copy of the citation to the District Court.

27 (6) (i) After receiving a citation and notice under this subsection, the
28 District Court shall schedule the case for trial and notify the defendant of the trial date.

29 (ii) In a proceeding before the District Court, a violation of
30 subsection (b) of this section shall be handled in the same manner as a municipal infraction
31 under §§ 6–108 through 6–115 of the Local Government Article.

1 (7) The District Court shall remit any penalties collected for a violation of
2 subsection (b) of this section to the county in which the violation occurred.

3 (8) Adjudication of a violation of subsection (b) of this section is not a
4 criminal conviction for any purpose.

5 (f) (1) The Maryland Department of Health, in collaboration and consultation
6 with the Office of the Comptroller, local health departments, and local law enforcement
7 agencies, shall develop ongoing strategies for enforcement of §§ 10–107 and 10–108 of the
8 Criminal Law Article.

9 (2) On or before October 1 each year, the Department shall report to the
10 General Assembly, in accordance with § 2–1246 of the State Government Article, on:

11 (i) The development of enforcement strategies required under
12 paragraph (1) of this subsection; and

13 (ii) Training and assistance to tobacco retailers to improve
14 compliance with § 10–107 of the Criminal Law Article.]

15 **Article – State Finance and Procurement**

16 7–317.

17 (a) There is a Cigarette Restitution Fund.

18 (b) (1) The Fund is a continuing, nonlapsing fund that is not subject to §
19 7–302 of this subtitle.

20 (2) There shall be credited to the Fund all revenues consisting of funds
21 received by the State from any source resulting, directly or indirectly, from any judgment
22 against or settlement with tobacco product manufacturers, tobacco research associations,
23 or any other person in the tobacco industry relating to litigation, administrative
24 proceedings, or any other claims made or prosecuted by the State to recover damages for
25 violations of State law.

26 (3) There shall be credited to the Fund all money collected under § 24–508
27 of the Health – General Article or § 5–608 of the Labor and Employment Article.

28 (c) The Treasurer shall:

29 (1) invest and reinvest the Fund in the same manner as other State funds;
30 and

31 (2) credit any investment earnings to the Fund.

32 (d) Expenditures from the Fund shall be made by an appropriation in the annual

1 State budget.

2 (e) (1) The Fund shall be expended subject to any restrictions on its use or
3 other limitations on its allocation that are:

4 (i) expressly provided by statute;

5 (ii) required as a condition of the acceptance of funds; or

6 (iii) determined to be necessary to avoid recoupment by the federal
7 government of money paid to the Fund.

8 (2) Disbursements from the Fund to programs funded by the State or with
9 federal funds administered by the State shall be used solely to supplement, and not to
10 supplant, funds otherwise available for the programs under federal or State law as provided
11 in this section.

12 (f) (1) The Cigarette Restitution Fund shall be used to fund:

13 (i) the Tobacco Use Prevention and Cessation Program established
14 under Title 13, Subtitle 10 of the Health – General Article;

15 (ii) the Cancer Prevention, Education, Screening, and Treatment
16 Program established under Title 13, Subtitle 11 of the Health – General Article; and

17 (iii) other programs that serve the following purposes:

18 1. reduction of the use of tobacco products by [minors]
19 **INDIVIDUALS UNDER THE AGE OF 21 YEARS;**

20 2. implementation of the Southern Maryland Regional
21 Strategy–Action Plan for Agriculture adopted by the Tri–County Council for Southern
22 Maryland with an emphasis on alternative crop uses for agricultural land now used for
23 growing tobacco;

24 3. public and school education campaigns to decrease tobacco
25 use with initial emphasis on areas targeted by tobacco manufacturers in marketing and
26 promoting cigarette and tobacco products;

27 4. smoking cessation programs;

28 5. enforcement of the laws regarding tobacco sales;

29 6. the purposes of the Maryland Health Care Foundation
30 under Title 20, Subtitle 5 of the Health – General Article;

31 7. primary health care in rural areas of the State and areas

1 targeted by tobacco manufacturers in marketing and promoting cigarette and tobacco
2 products;

3 8. prevention, treatment, and research concerning cancer,
4 heart disease, lung disease, tobacco product use, and tobacco control, including operating
5 costs and related capital projects;

6 9. substance abuse treatment and prevention programs; and

7 10. any other public purpose.

8 (2) The provisions of this subsection may not be construed to affect the
9 Governor's powers with respect to a request for an appropriation in the annual budget bill.

10 (g) (1) Amounts may only be expended from the Fund through appropriations
11 in the State budget bill as provided in this subsection.

12 (2) The Governor shall include in the annual budget bill appropriations
13 from the Fund equivalent to the lesser of \$100,000,000 or 90% of the funds estimated to be
14 available to the Fund in the fiscal year for which the appropriations are made.

15 (3) For each fiscal year for which appropriations are made, at least 50% of
16 the appropriations shall be made for those purposes enumerated in subsection (f)(1)(i), (ii),
17 and (iii)1 through 9 of this section subject to the requirement of subsection (e)(2) of this
18 section.

19 (4) For each fiscal year for which appropriations are made, at least 30% of
20 the appropriations shall be made for the purposes of the Maryland Medical Assistance
21 Program.

22 (5) For each fiscal year for which appropriations are made, 0.15% of the
23 Fund shall be appropriated for the purposes of enforcement of Title 16, Subtitle 5 of the
24 Business Regulation Article.

25 (6) Any additional appropriations, not subject to paragraph (3), paragraph
26 (4), or paragraph (5) of this subsection, may be made for any lawful purpose.

27 (h) For each program, project or activity receiving funds appropriated under
28 subsection (g)(3) of this section, the Governor shall:

29 (1) develop appropriate statements of vision, mission, key goals, key
30 objectives, and key performance indicators and report these statements in a discrete part
31 of the State budget submission, which shall also provide data for key performance
32 indicators; and

33 (2) report annually, subject to § 2-1246 of the State Government Article,
34 to the General Assembly no later than November 1 on:

1 (i) total funds expended, by program and subdivision, in the prior
2 fiscal year from the Fund established under this section; and

3 (ii) the specific outcomes or public benefits resulting from that
4 expenditure.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2019.