

HOUSE BILL 3

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EMERGENCY BILL
(PRE-FILED)

0lr0611
CF 0lr1372

By: **Delegate D.E. Davis**

Requested: September 4, 2019

Introduced and read first time: January 8, 2020

Assigned to: Economic Matters and Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Business Regulation – Flavored Tobacco Products – Prohibition**

3 FOR the purpose of providing that certain licenses to manufacture, sell, buy, and store
4 cigarettes, other tobacco products, and electronic smoking devices do not authorize
5 the licensee to or to attempt to manufacture, ship, import, or sell into or within the
6 State a flavored tobacco product; providing that a public statement that cigarettes,
7 other tobacco products, or electronic smoking devices have or produce a certain smell
8 or taste is presumptive evidence that they are flavored tobacco products if the
9 statement is made by certain persons; providing that a person that violates certain
10 cigarette license requirements is guilty of a misdemeanor and subject to certain
11 penalties; providing that a person who engages in an act or attempted act of
12 manufacturing, shipping, importing, or selling into or within the State flavored
13 tobacco products violates a certain provision of law; prohibiting a person from selling
14 or dispensing or offering to sell or dispense a flavored tobacco product through a
15 vending machine; amending the definition of “vaping liquid” to include liquids that
16 convert to other aerosol substances in addition to vapor; defining certain terms;
17 making this Act an emergency measure; and generally relating to the prohibition on
18 manufacturing, shipping, importing, or selling into or within the State flavored
19 tobacco products.

20 BY repealing and reenacting, with amendments,

21 Article – Business Regulation

22 Section 16–101, 16–206, 16–214, 16–3A–01, 16–3A–02, 16.5–101, 16.5–205,
23 16.5–212, 16.7–101, 16.7–204, and 16.7–211

24 Annotated Code of Maryland

25 (2015 Replacement Volume and 2019 Supplement)

26 BY repealing and reenacting, without amendments,

27 Article – Business Regulation

28 Section 16–3A–03

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2015 Replacement Volume and 2019 Supplement)

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

5 **Article – Business Regulation**

6 16–101.

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

8 (b) “Cigarette” means any size or shaped roll for smoking that is made of tobacco
9 or tobacco mixed with another ingredient and wrapped in paper or in any other material
10 except tobacco.

11 (c) “County license” means a license issued by the clerk to sell cigarettes at retail
12 in a county.

13 **(D) (1) “FLAVORED TOBACCO PRODUCT” MEANS A TOBACCO PRODUCT**
14 **THAT CONTAINS A TASTE OR SMELL, OTHER THAN THAT OF TOBACCO, THAT IS**
15 **DISTINGUISHABLE BY AN ORDINARY CONSUMER EITHER BEFORE OR DURING THE**
16 **CONSUMPTION OF THE TOBACCO PRODUCT.**

17 **(2) “FLAVORED TOBACCO PRODUCT” INCLUDES A TOBACCO**
18 **PRODUCT WITH A TASTE OR SMELL OF FRUIT, MENTHOL, MINT, WINTERGREEN,**
19 **CHOCOLATE, COCOA, VANILLA, HONEY, A CANDY, A DESSERT, AN ALCOHOLIC**
20 **BEVERAGE, AN HERB, OR A SPICE.**

21 **[(d)] (E) “Sell” means to exchange or transfer, or to agree to exchange or**
22 **transfer, title or possession of property, in any manner or by any means, for consideration.**

23 **[(e)] (F) (1) “Sell cigarettes at retail” means to sell cigarettes to a consumer.**

24 **(2) “Sell cigarettes at retail” includes selling cigarettes through a vending**
25 **machine.**

26 **(G) (1) “TOBACCO PRODUCT” MEANS A PRODUCT INTENDED FOR**
27 **INHALATION, ABSORPTION, INGESTION, SMOKING, HEATING, CHEWING,**
28 **DISSOLVING, OR ANY OTHER MANNER OF CONSUMPTION BY A HUMAN BEING AND**
29 **THAT IS MADE OF, DERIVED FROM, OR CONTAINS:**

30 **(I) TOBACCO; OR**

31 **(II) NICOTINE.**

1 **(2) “TOBACCO PRODUCT” INCLUDES:**

2 **(I) CIGARETTES, CIGARS, PIPE TOBACCO, CHEWING TOBACCO,**
3 **SNUFF, SNUS, AND ANY OTHER TOBACCO PRODUCT, AS DEFINED IN § 16.5–101 OF**
4 **THIS ARTICLE;**

5 **(II) ELECTRONIC SMOKING DEVICES, AS DEFINED IN § 16.7–101**
6 **OF THIS ARTICLE; AND**

7 **(III) ANY COMPONENT, PART, OR ACCESSORY OF ITEMS (I) OR (II)**
8 **OF THIS PARAGRAPH, REGARDLESS OF NICOTINE CONTENT, INCLUDING FILTERS,**
9 **ROLLING PAPERS, BLUNT WRAPS, HEMP WRAPS, HOOKAHS, PIPES, AND LIQUIDS**
10 **USED IN ELECTRONIC SMOKING DEVICES.**

11 **(3) “TOBACCO PRODUCT” DOES NOT INCLUDE A DRUG, DEVICE, OR**
12 **COMBINATION PRODUCT AUTHORIZED FOR SALE BY THE U.S. FOOD AND DRUG**
13 **ADMINISTRATION UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.**

14 16–206.

15 (a) **[A] SUBJECT TO SUBSECTION (G) OF THIS SECTION,** A manufacturer
16 license authorizes the licensee to:

17 (1) sell unstamped cigarettes to:

18 (i) a licensed cigarette wholesaler located in Maryland; and

19 (ii) a licensed cigarette wholesaler located outside of Maryland if the
20 unstamped cigarettes may lawfully be sold in Maryland;

21 (2) except as otherwise prohibited or restricted under local law, this article,
22 or the Criminal Law Article, distribute sample cigarettes to consumers located in
23 Maryland;

24 (3) store unstamped cigarettes in a licensed cigarette storage warehouse
25 for subsequent shipment to licensed wholesalers, federal reservations, or persons out of
26 state; and

27 (4) upon approval of the Comptroller, act as an agent of a Maryland
28 licensed wholesaler for stamping and distribution of cigarettes.

29 (b) **[A] SUBJECT TO SUBSECTION (G) OF THIS SECTION,** A retailer license
30 authorizes the licensee to:

1 (1) act as a retailer; and

2 (2) buy stamped cigarettes from a subwholesaler or wholesaler.

3 (c) (1) **[A] SUBJECT TO SUBSECTION (G) OF THIS SECTION,** A storage
4 warehouse license authorizes the licensee to operate a storage facility in Maryland for the
5 purpose of storing unstamped cigarettes on behalf of a licensed cigarette manufacturer.

6 (2) If a storage warehouse licensee is a licensed cigarette wholesaler or
7 licensed cigarette subwholesaler, the storage warehouse license authorizes the holder,
8 **SUBJECT TO SUBSECTION (G) OF THIS SECTION,** to store stamped cigarettes and
9 cigarettes with another state's tax stamp.

10 (d) **[A] SUBJECT TO SUBSECTION (G) OF THIS SECTION,** A subwholesaler
11 license authorizes the licensee to:

12 (1) act as a subwholesaler;

13 (2) buy stamped cigarettes from a wholesaler or another subwholesaler;
14 and

15 (3) store stamped cigarettes and cigarettes with another state's tax stamp
16 at a licensed cigarette storage facility.

17 (e) **[A] SUBJECT TO SUBSECTION (G) OF THIS SECTION,** A vending machine
18 operator license authorizes the licensee to:

19 (1) act as a vending machine operator; and

20 (2) buy stamped cigarettes from a subwholesaler or wholesaler.

21 (f) **[A] SUBJECT TO SUBSECTION (G) OF THIS SECTION,** A wholesaler license
22 authorizes the licensee to:

23 (1) act as a wholesaler;

24 (2) buy unstamped cigarettes directly from a cigarette manufacturer;

25 (3) hold unstamped cigarettes;

26 (4) buy tobacco tax stamps as authorized by § 12-303 of the Tax – General
27 Article;

28 (5) transport unstamped cigarettes in the State;

29 (6) sell unstamped cigarettes to another licensed wholesaler if the

1 Comptroller specifically authorizes;

2 (7) upon approval of the Comptroller, designate a licensed manufacturer to
3 act as its agent for the stamping and distribution of cigarettes; and

4 (8) store stamped cigarettes and cigarettes with another state's tax stamp
5 at a licensed cigarette storage facility.

6 **(G) (1) A LICENSE ISSUED UNDER THIS SUBTITLE DOES NOT AUTHORIZE**
7 **THE LICENSEE TO MANUFACTURE, SHIP, IMPORT, OR SELL INTO OR WITHIN THE**
8 **STATE A FLAVORED TOBACCO PRODUCT.**

9 **(2) A PUBLIC STATEMENT THAT A CIGARETTE HAS OR PRODUCES A**
10 **TASTE OR SMELL OTHER THAN TOBACCO IS PRESUMPTIVE EVIDENCE THAT THE**
11 **CIGARETTE IS A FLAVORED TOBACCO PRODUCT, IF THE STATEMENT IS MADE BY:**

12 **(I) THE CIGARETTE'S MANUFACTURER;**

13 **(II) A PERSON AUTHORIZED BY THE CIGARETTE'S**
14 **MANUFACTURER TO MAKE PUBLIC STATEMENTS ABOUT THE CIGARETTE;**

15 **(III) A LICENSED WHOLESALER OR A PERSON AUTHORIZED BY**
16 **THE WHOLESALER TO MAKE PUBLIC STATEMENTS ON THE WHOLESALER'S BEHALF;**

17 **(IV) A LICENSED SUBWHOLESALER OR A PERSON AUTHORIZED**
18 **BY THE SUBWHOLESALER TO MAKE PUBLIC STATEMENTS ON THE**
19 **SUBWHOLESALER'S BEHALF; OR**

20 **(V) A LICENSED RETAILER OR A PERSON AUTHORIZED BY THE**
21 **RETAILER TO MAKE PUBLIC STATEMENTS ON THE RETAILER'S BEHALF.**

22 **(3) A PERSON THAT VIOLATES THIS SUBSECTION IS GUILTY OF A**
23 **MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000**
24 **OR IMPRISONMENT NOT EXCEEDING 30 DAYS OR BOTH.**

25 16-214.

26 (a) **(1)** Except as otherwise provided in § 16-202(b) of this subtitle, a person
27 may not act, attempt to act, or offer to act as a manufacturer, retailer, storage warehouse,
28 subwholesaler, vending machine operator, or wholesaler in the State unless the person has
29 an appropriate license.

1 **(2) A PERSON WHO MANUFACTURES, SHIPS, IMPORTS, OR SELLS OR**
2 **ATTEMPTS TO MANUFACTURE, SHIP, IMPORT, OR SELL INTO OR WITHIN THE STATE**
3 **A FLAVORED TOBACCO PRODUCT VIOLATES PARAGRAPH (1) OF THIS SUBSECTION.**

4 (b) (1) A person who violates this section is guilty of a misdemeanor and, on
5 conviction, is subject to a fine of \$1,000 or imprisonment not exceeding 30 days or both.

6 (2) Each day that a violation of this section continues is a separate offense.

7 16-3A-01.

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

9 (b) “Owner” means the person that owns or operates an establishment in which a
10 vending machine is located.

11 (c) [(1) “Tobacco product” means any product that is:

12 (i) intended for human inhalation, absorption, ingestion, smoking,
13 heating, chewing, dissolving, or any other manner of consumption that is made of, derived
14 from, or contains:

15 1. tobacco; or

16 2. nicotine; or

17 (ii) an accessory or a component used in any manner of consumption
18 of a product described in item (i) of this paragraph.

19 (2) “Tobacco product” includes:

20 (i) cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and snus;

21 (ii) electronic smoking devices; and

22 (iii) filters, rolling papers, pipes, and liquids used in electronic
23 smoking devices regardless of nicotine content.

24 (3) “Tobacco product” does not include a drug, device, or combination
25 product authorized for sale by the U.S. Food and Drug Administration under the Federal
26 Food, Drug, and Cosmetic Act.

27 (d)] “Vending machine” means any mechanical, electronic, or similar self-service
28 device that on insertion of a coin, coins, token, or other similar means dispenses a tobacco
29 product.

30 16-3A-02.

1 **(A)** A person may not sell or dispense or offer to sell or dispense a tobacco product
2 through a vending machine in the State, unless the vending machine is located in an
3 establishment that individuals under the age of 21 years are prohibited by law from
4 entering at any time.

5 **(B) A PERSON MAY NOT SELL OR DISPENSE OR OFFER TO SELL OR DISPENSE**
6 **A FLAVORED TOBACCO PRODUCT THROUGH A VENDING MACHINE IN THE STATE.**

7 16-3A-03.

8 A person who violates this subtitle is guilty of a misdemeanor and on conviction is
9 subject to a fine not exceeding \$100.

10 16.5-101.

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

12 **(b)** “County license” means a license issued by the clerk to sell other tobacco
13 products at retail in a county.

14 **(c) (1) “FLAVORED TOBACCO PRODUCT” MEANS A TOBACCO PRODUCT**
15 **THAT CONTAINS A TASTE OR SMELL, OTHER THAN THAT OF TOBACCO, THAT IS**
16 **DISTINGUISHABLE BY AN ORDINARY CONSUMER EITHER BEFORE OR DURING THE**
17 **CONSUMPTION OF THE TOBACCO PRODUCT.**

18 **(2) “FLAVORED TOBACCO PRODUCT” INCLUDES A TOBACCO**
19 **PRODUCT WITH A TASTE OR SMELL OF FRUIT, MENTHOL, MINT, WINTERGREEN,**
20 **CHOCOLATE, COCOA, VANILLA, HONEY, A CANDY, A DESSERT, AN ALCOHOLIC**
21 **BEVERAGE, AN HERB, OR A SPICE.**

22 **[(c)] (D)** “License” means:

23 **(1)** a license issued by the Comptroller under § 16.5-204(a) of this title to:

24 **(i)** act as a licensed other tobacco products manufacturer;

25 **(ii)** act as an other tobacco products wholesaler; or

26 **(iii)** act as an other tobacco products storage warehouse; or

27 **(2)** a license issued by the clerk under § 16.5-204(b) of this title to act as
28 an other tobacco products retailer or a tobacconist.

29 **[(d)] (E)** “Licensed other tobacco products manufacturer” means a person
30 licensed by the Comptroller under § 16.5-204(a) of this title who:

1 (1) manufactures or otherwise produces other tobacco products in the State
2 intended for sale in the State, including other tobacco products intended for sale in the
3 State through an importer; and

4 (2) (i) sells other tobacco products on which the tobacco tax has not
5 been paid to a licensed other tobacco products wholesaler in the State;

6 (ii) sells other tobacco products on which the tobacco tax has not
7 been paid and which may lawfully be sold in the State to a licensed other tobacco products
8 wholesaler located outside of the State;

9 (iii) unless otherwise prohibited or restricted under local law, this
10 article, or the Criminal Law Article, distributes sample other tobacco products to
11 consumers located in the State; or

12 (iv) stores other tobacco products in an other tobacco products
13 warehouse in the State for subsequent shipment to licensed wholesalers, federal
14 reservations, or persons outside of the State.

15 **[(e)] (F)** “Licensed other tobacco products retailer” means a person licensed by
16 the clerk under § 16.5–204(b) of this title to act as an other tobacco products retailer.

17 **[(f)] (G)** “Licensed other tobacco products storage warehouse” means a facility
18 licensed by the Comptroller under § 16.5–204(a) of this title to act as an other tobacco
19 products storage warehouse.

20 **[(g)] (H)** “Licensed other tobacco products wholesaler” means a person licensed
21 by the Comptroller under § 16.5–204(a) of this title to act as an other tobacco products
22 wholesaler.

23 **[(h)] (I)** “Licensed tobacconist” means a person licensed by the clerk of a circuit
24 court under § 16.5–204(b) of this title to act as a tobacconist.

25 **[(i)] (J)** “Other tobacco products” means:

26 (1) any cigar or roll for smoking, other than a cigarette, made in whole or
27 in part of tobacco; or

28 (2) any other tobacco or product made primarily from tobacco, other than a
29 cigarette, that is intended for consumption by smoking or chewing or as snuff.

30 **[(j)] (K)** “Other tobacco products manufacturer” means a person who:

31 (1) manufactures or otherwise produces other tobacco products intended
32 for sale in this State, including other tobacco products intended for sale in the United States

1 through an importer;

2 (2) (i) sells other tobacco products on which the tobacco tax has not
3 been paid to a licensed other tobacco products wholesaler in Maryland;

4 (ii) sells other tobacco products on which the tobacco tax has not
5 been paid and which may lawfully be sold in Maryland to a licensed other tobacco products
6 wholesaler located outside Maryland;

7 (iii) unless otherwise prohibited or restricted under local law, this
8 article, or the Criminal Law Article, distributes sample other tobacco products to
9 consumers located in Maryland; or

10 (iv) stores other tobacco products in an other tobacco products
11 storage warehouse in Maryland for subsequent shipment to licensed other tobacco products
12 wholesalers, federal reservations, or persons out of state; or

13 (3) is a licensed other tobacco products manufacturer under this title.

14 **[(k)] (L)** “Other tobacco products retailer” means a person who:

15 (1) sells other tobacco products to consumers; or

16 (2) holds other tobacco products for sale to consumers.

17 **[(l)] (M)** “Other tobacco products storage warehouse” means a storage facility in
18 Maryland operated for the purpose of storing other tobacco products on which the tobacco
19 tax has not been paid on behalf of an other tobacco products manufacturer.

20 **[(m)] (N)** “Other tobacco products wholesaler” means a person who:

21 (1) holds other tobacco products for sale to another person for resale; or

22 (2) sells other tobacco products to another person for resale.

23 **[(n)] (O)** (1) “Package” means a pack, box, carton, can, wrap, pouch, bag, or
24 container of any kind designed for retail consumption in which other tobacco products are
25 offered for sale, sold, or otherwise distributed.

26 (2) “Package” includes not more than 10 cigars offered for sale, sold, or
27 distributed as single cigars.

28 **[(o)] (P)** “Pipe tobacco” means any tobacco that, because of its appearance, type,
29 packaging, or labeling, is suitable for use and likely to be offered to, or purchased by,
30 consumers as tobacco to smoke in a pipe.

1 **[(p)] (Q)** “Premium cigars” means cigars that:

2 (1) have hand–rolled wrappers made from whole tobacco leaves where the
3 filler, binder, and wrapper are made of all tobacco, and may include adhesives or other
4 materials used to maintain size, texture, or flavor; or

5 (2) are designated as premium cigars by the Comptroller by regulation.

6 **[(q)] (R)** “Sell” means to exchange or transfer, or to agree to exchange or
7 transfer, title or possession of property, in any manner or by any means, for consideration.

8 **[(r)] (S)** “Sell other tobacco products at retail” means to sell other tobacco
9 products to a consumer.

10 **(T) (1) “TOBACCO PRODUCT” MEANS ANY PRODUCT INTENDED FOR**
11 **INHALATION, ABSORPTION, INGESTION, SMOKING, HEATING, CHEWING,**
12 **DISSOLVING, OR ANY OTHER MANNER OF CONSUMPTION BY A HUMAN BEING AND**
13 **THAT IS MADE OF, DERIVED FROM, OR CONTAINS:**

14 **(I) TOBACCO; OR**

15 **(II) NICOTINE.**

16 **(2) “TOBACCO PRODUCT” INCLUDES:**

17 **(I) CIGARETTES, CIGARS, PIPE TOBACCO, CHEWING TOBACCO,**
18 **SNUFF, SNUS, AND ANY OTHER TOBACCO PRODUCT;**

19 **(II) ELECTRONIC SMOKING DEVICES, AS DEFINED UNDER §**
20 **16.7–101 OF THIS ARTICLE; AND**

21 **(III) ANY COMPONENT, PART, OR ACCESSORY OF ITEMS (I) OR (II)**
22 **OF THIS PARAGRAPH, REGARDLESS OF NICOTINE CONTENT, INCLUDING FILTERS,**
23 **ROLLING PAPERS, BLUNT WRAPS, HEMP WRAPS, HOOKAHS, PIPES, AND LIQUIDS**
24 **USED IN ELECTRONIC SMOKING DEVICES.**

25 **(3) “TOBACCO PRODUCT” DOES NOT INCLUDE A DRUG, DEVICE, OR**
26 **COMBINATION PRODUCT AUTHORIZED FOR SALE BY THE U.S. FOOD AND DRUG**
27 **ADMINISTRATION UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.**

28 **[(s)] (U)** “Tobacconist” means an other tobacco products business that derives at
29 least 70% of its revenues, measured by average daily receipts, from the sale of other tobacco
30 products and tobacco–related accessories.

31 16.5–205.

1 (a) **[An] SUBJECT TO SUBSECTION (F) OF THIS SECTION, AN** other tobacco
2 products manufacturer may:

3 (1) sell other tobacco products on which the tobacco tax has not been paid
4 to:

5 (i) a licensed other tobacco products wholesaler located in
6 Maryland;

7 (ii) a licensed other tobacco products wholesaler located outside
8 Maryland if the other tobacco products may be sold lawfully in Maryland; or

9 (iii) a licensed tobacconist;

10 (2) sell premium cigars or pipe tobacco on which the tobacco tax has not
11 been paid to a licensed other tobacco products retailer;

12 (3) except as otherwise prohibited or restricted under local law, this article,
13 or the Criminal Law Article, distribute sample other tobacco products to consumers located
14 in Maryland;

15 (4) store other tobacco products on which the tobacco tax has not been paid
16 in a licensed other tobacco products storage warehouse for subsequent shipment to licensed
17 other tobacco products wholesalers, federal reservations, or persons out of state; and

18 (5) on approval of the Comptroller, act as an agent of a Maryland other
19 tobacco products wholesaler for distribution of other tobacco products.

20 (b) **[An] SUBJECT TO SUBSECTION (F) OF THIS SECTION, AN** other tobacco
21 products retailer license authorizes the licensee to:

22 (1) act as an other tobacco products retailer;

23 (2) buy other tobacco products on which the tobacco tax has been paid from
24 an other tobacco products wholesaler; and

25 (3) buy premium cigars or pipe tobacco on which the tobacco tax has not
26 been paid from an other tobacco products manufacturer.

27 (c) (1) **[An] SUBJECT TO SUBSECTION (F) OF THIS SECTION, AN** other
28 tobacco products storage warehouse license authorizes the licensee to operate a storage
29 facility in Maryland for the purpose of storing other tobacco products on which the tobacco
30 tax has not been paid on behalf of a licensed other tobacco products manufacturer.

31 (2) If an other tobacco products storage warehouse licensee is a licensed
32 other tobacco products wholesaler, the other tobacco products storage warehouse license

1 authorizes the holder, **SUBJECT TO SUBSECTION (F) OF THIS SECTION**, to store other
2 tobacco products on which the tobacco tax has been paid and other tobacco products on
3 which the tobacco tax has been paid to another state.

4 (d) **[An] SUBJECT TO SUBSECTION (F) OF THIS SECTION**, AN other tobacco
5 products wholesaler license authorizes the licensee to:

6 (1) act as an other tobacco products wholesaler;

7 (2) buy other tobacco products on which the tobacco tax has not been paid
8 directly from an other tobacco products manufacturer;

9 (3) hold other tobacco products on which the tobacco tax has not been paid;

10 (4) transport other tobacco products on which the tobacco tax has not been
11 paid in the State;

12 (5) sell other tobacco products on which the tobacco tax has not been paid
13 to another licensed other tobacco products wholesaler if the Comptroller specifically
14 authorizes; and

15 (6) store other tobacco products on which the tobacco tax has not been paid
16 at a licensed other tobacco products storage warehouse.

17 (e) **[A] SUBJECT TO SUBSECTION (F) OF THIS SECTION**, A tobacconist license
18 authorizes the licensee to:

19 (1) act as a tobacconist; and

20 (2) buy other tobacco products on which the tobacco tax has not been paid
21 from an other tobacco products manufacturer.

22 **(F) (1) A LICENSE ISSUED UNDER THIS TITLE DOES NOT AUTHORIZE THE**
23 **LICENSEE TO MANUFACTURE, SHIP, IMPORT, OR SELL INTO OR WITHIN THE STATE**
24 **A FLAVORED TOBACCO PRODUCT.**

25 **(2) A PUBLIC STATEMENT THAT AN OTHER TOBACCO PRODUCT HAS**
26 **OR PRODUCES A TASTE OR SMELL OTHER THAN TOBACCO IS PRESUMPTIVE**
27 **EVIDENCE THAT THE OTHER TOBACCO PRODUCT IS A FLAVORED TOBACCO**
28 **PRODUCT, IF THE STATEMENT IS MADE BY:**

29 **(I) THE MANUFACTURER OF THE OTHER TOBACCO PRODUCT;**

30 **(II) A PERSON AUTHORIZED BY THE MANUFACTURER TO MAKE**
31 **PUBLIC STATEMENTS ABOUT THE OTHER TOBACCO PRODUCT;**

1 **(III) A LICENSED RETAILER OR A PERSON AUTHORIZED BY THE**
2 **RETAILER TO MAKE PUBLIC STATEMENTS ON THE RETAILER’S BEHALF;**

3 **(IV) A STORAGE WAREHOUSE LICENSEE OR A PERSON**
4 **AUTHORIZED BY THE LICENSEE TO MAKE PUBLIC STATEMENTS ON THE LICENSEE’S**
5 **BEHALF;**

6 **(V) A LICENSED WHOLESALER OR A PERSON AUTHORIZED BY**
7 **THE WHOLESALER TO MAKE PUBLIC STATEMENTS ON THE WHOLESALER’S BEHALF;**
8 **OR**

9 **(VI) A LICENSED TOBACCONIST OR A PERSON AUTHORIZED BY**
10 **THE TOBACCONIST TO MAKE PUBLIC STATEMENTS ON THE TOBACCONIST’S BEHALF.**

11 16.5–212.

12 (a) **(1)** Except as otherwise provided in § 16.5–201(b) of this subtitle, a person
13 may not act, attempt to act, or offer to act as a licensed other tobacco products
14 manufacturer, a licensed other tobacco products retailer, a licensed other tobacco products
15 storage warehouse, a licensed other tobacco products wholesaler, or a licensed tobacconist
16 in the State unless the person has an appropriate license.

17 **(2) A PERSON WHO MANUFACTURES, SHIPS, IMPORTS, OR SELLS OR**
18 **ATTEMPTS TO MANUFACTURE, SHIP, IMPORT, OR SELL INTO OR WITHIN THE STATE**
19 **A FLAVORED TOBACCO PRODUCT VIOLATES PARAGRAPH (1) OF THIS SUBSECTION.**

20 (b) (1) A person who violates this section is guilty of a misdemeanor and on
21 conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 30 days
22 or both.

23 (2) Each day that a violation of this section continues is a separate offense.

24 16.7–101.

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

26 (b) “County license” means a license issued by the clerk to sell electronic smoking
27 devices to consumers in a county.

28 (c) (1) “Electronic smoking device” means a device that can be used to deliver
29 aerosolized or vaporized nicotine to an individual inhaling from the device.

30 (2) “Electronic smoking device” includes:

31 (i) an electronic cigarette, an electronic cigar, an electronic cigarillo,

1 an electronic pipe, an electronic hookah, a vape pen, and vaping liquid; and

2 (ii) any component, part, or accessory of such a device regardless of
3 whether or not it is sold separately, including any substance intended to be aerosolized or
4 vaporized during use of the device.

5 (3) “Electronic smoking device” does not include a drug, device, or
6 combination product authorized for sale by the U.S. Food and Drug Administration under
7 the Federal Food, Drug, and Cosmetic Act.

8 (d) “Electronic smoking devices manufacturer” means a person that:

9 (1) manufactures, mixes, or otherwise produces electronic smoking devices
10 intended for sale in the State, including electronic smoking devices intended for sale in the
11 United States through an importer; and

12 (2) (i) sells electronic smoking devices to a consumer, if the consumer
13 purchases or orders the devices through the mail, a computer network, a telephonic
14 network, or another electronic network, a licensed electronic smoking devices wholesaler
15 distributor, or a licensed electronic smoking devices wholesaler importer in the State;

16 (ii) if the electronic smoking devices manufacturer also holds a
17 license to act as an electronic smoking devices retailer or a vape shop vendor, sells electronic
18 smoking devices to consumers located in the State; or

19 (iii) unless otherwise prohibited or restricted under local law, this
20 article, or the Criminal Law Article, distributes sample electronic smoking devices to a
21 licensed electronic smoking devices retailer or vape shop vendor.

22 (e) “Electronic smoking devices retailer” means a person that:

23 (1) sells electronic smoking devices to consumers;

24 (2) holds electronic smoking devices for sale to consumers; or

25 (3) unless otherwise prohibited or restricted under local law, this article,
26 the Criminal Law Article, or § 24–305 of the Health – General Article, distributes sample
27 electronic smoking devices to consumers in the State.

28 (f) “Electronic smoking devices wholesaler distributor” means a person that:

29 (1) obtains at least 70% of its electronic smoking devices from a holder of
30 an electronic smoking devices manufacturer license under this subtitle or a business entity
31 located in the United States; and

32 (2) (i) holds electronic smoking devices for sale to another person for
33 resale; or

1 (ii) sells electronic smoking devices to another person for resale.

2 (g) “Electronic smoking devices wholesaler importer” means a person that:

3 (1) obtains at least 70% of its electronic smoking devices from a business
4 entity located in a foreign country; and

5 (2) (i) holds electronic smoking devices for sale to another person for
6 resale; or

7 (ii) sells electronic smoking devices to another person for resale.

8 **(H) (1) “FLAVORED TOBACCO PRODUCT” MEANS A TOBACCO PRODUCT**
9 **THAT CONTAINS A TASTE OR SMELL, OTHER THAN THAT OF TOBACCO, THAT IS**
10 **DISTINGUISHABLE BY AN ORDINARY CONSUMER EITHER BEFORE OR DURING THE**
11 **CONSUMPTION OF THE TOBACCO PRODUCT.**

12 **(2) “FLAVORED TOBACCO PRODUCT” INCLUDES A TOBACCO**
13 **PRODUCT WITH A TASTE OR SMELL OF FRUIT, MENTHOL, MINT, WINTERGREEN,**
14 **CHOCOLATE, COCOA, VANILLA, HONEY, A CANDY, A DESSERT, AN ALCOHOLIC**
15 **BEVERAGE, AN HERB, OR A SPICE.**

16 **[(h)] (I)** “License” means:

17 (1) a license issued by the Comptroller under § 16.7–203(a) of this title to:

18 (i) act as a licensed electronic smoking devices manufacturer;

19 (ii) act as a licensed electronic smoking devices wholesaler
20 distributor; or

21 (iii) act as a licensed electronic smoking devices wholesaler importer;

22 or

23 (2) a license issued by the clerk under § 16.7–203(b) of this title to:

24 (i) act as a licensed electronic smoking devices retailer; or

25 (ii) act as a licensed vape shop vendor.

26 **[(i)] (J)** “Sell” means to exchange or transfer, or to agree to exchange or
27 transfer, title or possession of property, in any manner or by any means, for consideration.

28 **(K) (1) “TOBACCO PRODUCT” MEANS ANY PRODUCT INTENDED FOR**
29 **INHALATION, ABSORPTION, INGESTION, SMOKING, HEATING, CHEWING,**

1 DISSOLVING, OR ANY OTHER MANNER OF CONSUMPTION BY A HUMAN BEING AND
2 THAT IS MADE OF, DERIVED FROM, OR CONTAINS:

3 (I) TOBACCO; OR

4 (II) NICOTINE.

5 (2) "TOBACCO PRODUCT" INCLUDES:

6 (I) CIGARETTES, CIGARS, PIPE TOBACCO, CHEWING TOBACCO,
7 SNUFF, SNUS, AND OTHER TOBACCO PRODUCTS, AS DEFINED IN § 16.5–101 OF THIS
8 TITLE;

9 (II) ELECTRONIC SMOKING DEVICES; AND

10 (III) ANY COMPONENT, PART, OR ACCESSORY OF ITEMS (I) OR (II)
11 OF THIS PARAGRAPH, REGARDLESS OF NICOTINE CONTENT, INCLUDING FILTERS,
12 ROLLING PAPERS, BLUNT WRAPS, HEMP WRAPS, HOOKAHS, PIPES, AND LIQUIDS
13 USED IN ELECTRONIC SMOKING DEVICES.

14 (3) "TOBACCO PRODUCT" DOES NOT INCLUDE A DRUG, DEVICE, OR
15 COMBINATION PRODUCT AUTHORIZED FOR SALE BY THE U.S. FOOD AND DRUG
16 ADMINISTRATION UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

17 [(j)] (L) "Vape shop vendor" means an electronic smoking devices business that
18 derives at least 70% of its revenues, measured by average daily receipts, from the sale of
19 electronic smoking devices and related accessories.

20 [(k)] (M) "Vaping liquid" means a liquid that:

21 (1) consists of propylene glycol, vegetable glycerin, or other similar
22 substance;

23 (2) may or may not contain natural or artificial flavors;

24 (3) may or may not contain nicotine; and

25 (4) converts to vapor OR OTHER AEROSOL SUBSTANCE intended for
26 inhalation when heated in an electronic device.

27 16.7–204.

28 (a) [An] SUBJECT TO SUBSECTION (E) OF THIS SECTION, AN electronic
29 smoking devices manufacturer license authorizes the licensee to:

1 (1) sell electronic smoking devices to:

2 (i) a licensed electronic smoking devices wholesaler located in the
3 State;

4 (ii) an electronic smoking devices wholesaler or retailer located
5 outside the State if the electronic smoking devices may be sold lawfully in Maryland;

6 (iii) a licensed vape shop vendor; and

7 (iv) a consumer if:

8 1. the licensee manufactured the devices; and

9 2. the consumer purchases or orders the devices through the
10 mail, a computer network, a telephonic network, or another electronic network;

11 (2) if the electronic smoking devices manufacturer licensee also holds a
12 license to act as an electronic smoking devices retailer or a vape shop vendor, transfer
13 electronic smoking devices to inventory for sale under the retail license or vape shop license;
14 and

15 (3) except as otherwise prohibited or restricted under local law, this article,
16 or the Criminal Law Article, distribute electronic smoking devices products to a licensed
17 electronic smoking devices retailer or vape shop vendor.

18 (b) **[An] SUBJECT TO SUBSECTION (E) OF THIS SECTION, AN** electronic
19 smoking devices retailer license authorizes the licensee to:

20 (1) sell electronic smoking devices to consumers;

21 (2) buy electronic smoking devices from an electronic smoking devices
22 wholesaler distributor or electronic smoking devices wholesaler importer;

23 (3) if the electronic smoking devices retailer licensee also holds a license to
24 act as an electronic smoking devices manufacturer, sell at retail electronic smoking devices
25 manufactured under the manufacturer license; and

26 (4) except as otherwise prohibited or restricted under local law, this article,
27 the Criminal Law Article, or § 24–305 of the Health – General Article, distribute sample
28 electronic smoking devices products to consumers in the State.

29 (c) **[An] SUBJECT TO SUBSECTION (E) OF THIS SECTION, AN** electronic
30 smoking devices wholesaler distributor license or electronic smoking devices wholesaler
31 importer license authorizes the licensee to:

32 (1) sell electronic smoking devices to electronic smoking devices retailers

1 and vape shop vendors;

2 (2) buy electronic smoking devices directly from an electronic smoking
3 devices manufacturer and an electronic smoking devices wholesaler distributor or
4 electronic smoking devices wholesaler importer;

5 (3) hold electronic smoking devices; and

6 (4) sell electronic smoking devices to another licensed electronic smoking
7 devices wholesaler distributor or electronic smoking devices wholesaler importer.

8 (d) **[A] SUBJECT TO SUBSECTION (E) OF THIS SECTION, A** vape shop vendor
9 license authorizes the licensee to:

10 (1) sell electronic smoking devices as a vape shop vendor;

11 (2) if the vape shop vendor licensee also holds a license to act as an
12 electronic smoking devices manufacturer, sell at retail electronic smoking devices
13 manufactured under the manufacturer license; and

14 (3) buy electronic smoking devices from an electronic smoking devices
15 manufacturer, an electronic smoking devices wholesaler distributor, or an electronic
16 smoking devices wholesaler importer.

17 **(E) (1) A LICENSE ISSUED UNDER THIS SUBTITLE DOES NOT AUTHORIZE**
18 **THE LICENSEE TO MANUFACTURE, SHIP, IMPORT, OR SELL INTO OR WITHIN THE**
19 **STATE A FLAVORED TOBACCO PRODUCT.**

20 **(2) A PUBLIC STATEMENT THAT AN ELECTRONIC SMOKING DEVICE**
21 **HAS OR PRODUCES A TASTE OR SMELL OTHER THAN TOBACCO IS PRESUMPTIVE**
22 **EVIDENCE THAT THE ELECTRONIC SMOKING DEVICE IS A FLAVORED TOBACCO**
23 **PRODUCT, IF THE STATEMENT IS MADE BY:**

24 **(I) THE MANUFACTURER OF THE ELECTRONIC SMOKING**
25 **DEVICE;**

26 **(II) A PERSON AUTHORIZED BY THE MANUFACTURER TO MAKE**
27 **PUBLIC STATEMENTS ABOUT THE ELECTRONIC SMOKING DEVICE;**

28 **(III) A LICENSED RETAILER OR A PERSON AUTHORIZED BY THE**
29 **RETAILER TO MAKE PUBLIC STATEMENTS ON THE RETAILER'S BEHALF;**

30 **(IV) A LICENSED WHOLESALER OR A PERSON AUTHORIZED BY**
31 **THE WHOLESALER TO MAKE PUBLIC STATEMENTS ON THE WHOLESALER'S BEHALF;**
32 **OR**

1 **(V) A LICENSED VAPE SHOP VENDOR OR A PERSON AUTHORIZED**
2 **BY THE VAPE SHOP VENDOR TO MAKE PUBLIC STATEMENTS ON THE VAPE SHOP**
3 **VENDOR'S BEHALF.**

4 16.7–211.

5 (a) **(1)** A person may not act, attempt to act, or offer to act as an electronic
6 smoking devices manufacturer, an electronic smoking devices retailer, an electronic
7 smoking devices wholesaler distributor, an electronic smoking devices wholesaler importer,
8 or a vape shop vendor in the State unless the person has an appropriate license.

9 **(2) A PERSON WHO MANUFACTURES, SHIPS, IMPORTS, OR SELLS OR**
10 **ATTEMPTS TO MANUFACTURE, SHIP, IMPORT, OR SELL INTO OR WITHIN THE STATE**
11 **A FLAVORED TOBACCO PRODUCT VIOLATES PARAGRAPH (1) OF THIS SUBSECTION.**

12 (b) (1) A person that violates this section is guilty of a misdemeanor and on
13 conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 30 days
14 or both.

15 (2) Each day that a violation of this section continues is a separate offense.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
17 measure, is necessary for the immediate preservation of the public health or safety, has
18 been passed by a ye and nay vote supported by three–fifths of all the members elected to
19 each of the two Houses of the General Assembly, and shall take effect from the date it is
20 enacted.