

HOUSE BILL 1197

C2

4r3098
CF 4r3289

By: **Delegate Rogers**

Introduced and read first time: February 8, 2024

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Business Regulation – Electronic Smoking Devices Manufacturers –**
3 **Certifications**

4 FOR the purpose of requiring a certain tobacco products manufacturer and a certain
5 electronic smoking devices manufacturer to pay a certain certification fee;
6 authorizing the Executive Director of the Alcohol, Tobacco, and Cannabis
7 Commission and the Attorney General to take certain action relating to the licensure
8 of certain electronic smoking devices manufacturers, wholesalers, importers, and
9 retailers and vape shop vendors in certain circumstances; requiring an electronic
10 smoking devices manufacturer to execute and deliver a certain certification to the
11 Attorney General each year; requiring the Attorney General to develop and make
12 available to the public a certain directory listing certain electronic smoking devices
13 manufacturers; and generally relating to the regulation of tobacco products and
14 electronic smoking devices.

15 BY repealing and reenacting, with amendments,

16 Article – Business Regulation

17 Section 16–3A–01; 16–503(a) and 16–504(a) to be under the amended subtitle
18 “Subtitle 5. Certification Requirements for Tobacco Product Manufacturers”;
19 16.5–101(j), 16.7–101, and 16.7–102; and 16.7–202 through 16.7–204,
20 16.7–204.1, 16.7–207, 16.7–209, and 16.7–213.1 to be under the amended
21 subtitle “Subtitle 2. Electronic Smoking Devices Licenses”

22 Annotated Code of Maryland

23 (2015 Replacement Volume and 2023 Supplement)

24 BY repealing and reenacting, without amendments,

25 Article – Business Regulation

26 Section 16.5–101(a) and (d) and 16.7–201

27 Annotated Code of Maryland

28 (2015 Replacement Volume and 2023 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Business Regulation
3 Section 16–509; and 16.7–301 through 16.7–307 to be under the new subtitle
4 “Subtitle 3. Certification Requirements for Electronic Smoking Devices
5 Manufacturers”
6 Annotated Code of Maryland
7 (2015 Replacement Volume and 2023 Supplement)

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

10 **Article – Business Regulation**

11 16–3A–01.

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

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

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

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

19 1. tobacco; or

20 2. nicotine; or

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

23 (2) “Tobacco product” includes:

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

25 (ii) electronic smoking devices; and

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

28 (3) “Tobacco product” does not include a drug, device, or combination
29 product authorized for sale AS A NICOTINE REPLACEMENT PRODUCT by the U.S. Food
30 and Drug Administration under the Federal Food, Drug, and Cosmetic Act.

1 (d) "Vending machine" means any mechanical, electronic, or similar self-service
2 device that on insertion of a coin, coins, token, or other similar means dispenses a tobacco
3 product.

4 Subtitle 5. [Escrow] **CERTIFICATION** Requirements for [Nonparticipating] Tobacco
5 Product Manufacturers.

6 16-503.

7 (a) A tobacco product manufacturer whose cigarettes are sold in this State,
8 whether directly or through a distributor, retailer or similar intermediary, shall:

9 (1) execute and deliver, on a form prescribed by the Attorney General, a
10 certification to the Attorney General no later than the 30th day of April each year, certifying
11 under penalty of perjury that, as of the date of the certification, the tobacco product
12 manufacturer either:

13 [(1)] (I) is a participating manufacturer; or

14 [(2)] (II) is in full compliance with the Escrow Act; AND

15 (2) **PAY TO THE COMPTROLLER A FEE OF \$1,000.**

16 16-504.

17 (a) Except as provided in subsection (b) of this section, the Attorney General shall
18 develop and make available for public inspection a directory listing:

19 (1) all tobacco product manufacturers that **THE ATTORNEY GENERAL**
20 **HAS DETERMINED:**

21 (I) have provided current and accurate certifications conforming to
22 the requirements of § 16-503 of this subtitle; and

23 (II) **ARE IN COMPLIANCE WITH ALL APPLICABLE FEDERAL,**
24 **STATE, AND LOCAL LAWS; AND**

25 (2) all brand families [that are] listed in [such] **THE** certifications **THAT**
26 **ARE COMPLIANT WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS.**

27 **16-509.**

28 **THE REVENUES FROM THE CERTIFICATION FEE ESTABLISHED UNDER §**
29 **16-503 OF THIS SUBTITLE SHALL BE DISTRIBUTED TO A SPECIAL FUND TO BE USED**

1 BY THE OFFICE OF THE ATTORNEY GENERAL FOR ENFORCEMENT OF THIS
2 SUBTITLE.

3 16.5–101.

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

5 (d) “License” means:

6 (1) a license issued by the Executive Director under § 16.5–204(a) of this
7 title to:

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

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

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

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

13 (j) (1) “Other tobacco products” means, except as provided in paragraph (3) of
14 this subsection, a product that is:

15 (i) intended for human consumption or likely to be consumed,
16 whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested in any other
17 manner, and that is made of or derived from, or that contains:

18 1. tobacco; or

19 2. nicotine; or

20 (ii) a component or part used in a consumable product described
21 under item (i) of this paragraph.

22 (2) “Other tobacco products” includes:

23 (i) cigars, premium cigars, pipe tobacco, chewing tobacco, snuff, and
24 snus; and

25 (ii) filters, rolling papers, pipes, and hookahs.

26 (3) “Other tobacco products” does not include:

27 (i) cigarettes;

28 (ii) electronic smoking devices;

1 (iii) drugs, devices, or combination products authorized for sale AS A
2 **NICOTINE REPLACEMENT PRODUCT** by the U.S. Food and Drug Administration under
3 the Federal Food, Drug, and Cosmetic Act; or

4 (iv) tobacco pipes, as defined under § 11–104 of the Tax – General
5 Article.
6 16.7–101.

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

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

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

12 (2) “Electronic smoking device” includes:

13 (i) an electronic cigarette, an electronic cigar, an electronic cigarillo,
14 an electronic pipe, an electronic hookah, a vape pen, **NICOTINE SALTS**, and vaping liquid;
15 and

16 (ii) except as provided in paragraph (3) of this subsection, any
17 component, part, **CARTRIDGE, TANK**, or accessory of such a device regardless of whether
18 or not it is sold separately, including any substance intended to be aerosolized or vaporized
19 during use of the device.

20 (3) “Electronic smoking device” does not include:

21 (i) a drug, device, or combination product authorized for sale AS A
22 **NICOTINE REPLACEMENT PRODUCT** by the U.S. Food and Drug Administration under
23 the Federal Food, Drug, and Cosmetic Act; or

24 (ii) a battery or battery charger when sold separately.

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

26 (1) manufactures, mixes, or otherwise produces electronic smoking devices
27 intended for sale in the State, including electronic smoking devices intended for sale in the
28 United States through [an importer] **A LICENSED ELECTRONIC SMOKING DEVICES**
29 **WHOLESALE DISTRIBUTOR OR A LICENSED ELECTRONIC SMOKING DEVICES**
30 **WHOLESALE IMPORTER**; and

1 (2) (i) sells electronic smoking devices to [a consumer, if the consumer
2 purchases or orders the devices through the mail, a computer network, a telephonic
3 network, or another electronic network,] a licensed electronic smoking devices wholesaler
4 distributor[,] or a licensed electronic smoking devices wholesaler importer in the State; **OR**

5 (ii) if the electronic smoking devices manufacturer also holds a
6 license to act as an electronic smoking devices retailer or a vape shop vendor, sells electronic
7 smoking devices to consumers located in the State[]; or

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

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

12 (1) sells electronic smoking devices to consumers; **OR**

13 (2) holds electronic smoking devices for sale to consumers[]; or

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

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

18 (1) obtains [at least 70% of its] electronic smoking devices from [a holder
19 of an]:

20 (I) A **LICENSED** electronic smoking devices manufacturer [license
21 under this subtitle or a business entity located in the United States];

22 (II) A **LICENSED ELECTRONIC SMOKING DEVICES WHOLESALER**
23 **DISTRIBUTOR; OR**

24 (III) A **LICENSED ELECTRONIC SMOKING DEVICES WHOLESALER**
25 **IMPORTER; and**

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

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

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

1 (1) obtains at least 70% of its electronic smoking devices from a [business
2 entity] **LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER** located in a
3 foreign country; and

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

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

7 (h) “Executive Director” means the Executive Director of the Alcohol and Tobacco
8 Commission.

9 (i) “License” means:

10 (1) a license issued by the Executive Director under § 16.7–203(a) of this
11 title to:

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

13 (ii) act as a licensed electronic smoking devices wholesaler
14 distributor; or

15 (iii) act as a licensed electronic smoking devices wholesaler importer;
16 or

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

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

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

20 (j) “Sell” means to exchange or transfer, or to agree to exchange or transfer, title
21 or possession of property, in any manner or by any means, for consideration.

22 (k) “Vape shop vendor” means an electronic smoking devices business that derives
23 at least 70% of its revenues, measured by average daily receipts, from the sale of electronic
24 smoking devices and related accessories.

25 (l) “Vaping liquid” means a liquid that:

26 (1) consists of propylene glycol, vegetable glycerin, or other similar
27 substance;

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

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

1 (4) converts to vapor intended for inhalation when heated in an electronic
2 device.

3 16.7–102.

4 (a) The Executive Director may delegate any power or duty of the Executive
5 Director under this title.

6 (b) Any person licensed under Title 16 or Title 16.5 of this article[, or an affiliate,
7 as defined under § 16–402(c) of this article, of a person licensed under Title 16 of this
8 article] **WHO IS ALSO SEEKING TO MANUFACTURE, DISTRIBUTE, OR SELL**
9 **ELECTRONIC SMOKING DEVICES:**

10 (1) [is authorized to] **MUST OBTAIN A LICENSE TO** manufacture,
11 distribute, or sell electronic smoking devices pursuant to this title in the same capacity as
12 the person is licensed under Title 16 or Title 16.5 of this article; and

13 (2) may not be required to [obtain an additional license] **PAY ANY**
14 **ADDITIONAL APPLICATION FEE** under this title.

15 Subtitle 2. Electronic [Nicotine Delivery Systems] **SMOKING DEVICES** Licenses.

16 16.7–201.

17 (a) A person must hold an appropriate license before the person may act as:

18 (1) an electronic smoking devices manufacturer;

19 (2) an electronic smoking devices retailer;

20 (3) an electronic smoking devices wholesaler distributor;

21 (4) an electronic smoking devices wholesaler importer; or

22 (5) a vape shop vendor.

23 (b) A place of business in which a person acts as an electronic smoking devices
24 retailer or a vape shop vendor must hold an appropriate license.

25 16.7–202.

26 (a) [(1)] An applicant for a license to act as an electronic smoking devices
27 manufacturer, electronic smoking devices wholesaler distributor, or electronic smoking
28 devices wholesaler importer shall:

1 [(i)] (1) obtain an appropriate [county] license by submitting an
2 application to the Executive Director on the form and containing the information that the
3 Executive Director requires;

4 [(ii)] (2) indicate the licenses for which the applicant is applying;
5 and

6 [(iii)] (3) [except as provided in paragraph (2) of this subsection,]
7 pay to the Executive Director a fee of [\$25 for each license for which the applicant applies.]:

8 [(2)] (I) [An applicant] **\$750 FOR AN APPLICATION** for a license to act
9 as an electronic smoking devices wholesaler distributor or electronic smoking devices
10 wholesaler importer [shall pay to the Executive Director a fee of \$150]; AND

11 (II) **\$1,000 FOR AN APPLICATION FOR A LICENSE TO ACT AS AN**
12 **ELECTRONIC SMOKING DEVICES MANUFACTURER.**

13 (b) (1) An applicant for a license to act as an electronic smoking devices
14 retailer or a vape shop vendor:

15 (i) shall obtain a county license by submitting to the clerk an
16 application for each permanent or temporary place of business located in the same
17 enclosure and operated by the same applicant; and

18 (ii) except as provided in paragraph (2) of this subsection, shall pay
19 to the clerk a fee of [\$25] **\$30.**

20 (2) The application shall:

21 (i) be made on the form that the clerk requires; and

22 (ii) contain the information that the Executive Director requires.

23 (c) A licensee shall display a license in the way that the Executive Director
24 requires by regulation.

25 (d) If a person has had a license revoked under § 16.7–207 of this subtitle, the
26 person may not reapply for a license within 1 year after the date when the prior license was
27 revoked.

28 16.7–203.

29 (a) The Executive Director shall issue an appropriate license to each applicant
30 that meets the requirements of this subtitle for a license to act as an electronic smoking
31 devices manufacturer, electronic smoking devices wholesaler distributor, or electronic
32 smoking devices wholesaler importer.

1 (b) The clerk shall issue to each applicant that meets the requirements of this
2 subtitle a license to act as an electronic smoking devices retailer or a vape shop vendor.

3 (c) The clerk shall forward a copy of an application received for each license
4 issued under subsection (b) of this section to the Executive Director **AND THE ATTORNEY**
5 **GENERAL** within 30 days after issuance of the license.

6 16.7–204.

7 (a) An electronic smoking devices manufacturer license authorizes the licensee
8 to:

9 (1) sell electronic smoking devices to:

10 (i) a licensed electronic smoking devices wholesaler [located in the
11 State] **DISTRIBUTOR; OR**

12 (ii) [an electronic smoking devices wholesaler or retailer located
13 outside the State if the electronic smoking devices may be sold lawfully in Maryland] **A**
14 **LICENSED ELECTRONIC SMOKING DEVICES WHOLESALER IMPORTER; AND**

15 [(iii) a licensed vape shop vendor; and

16 (iv) a consumer if:

17 1. the licensee manufactured the devices; and

18 2. the consumer purchases or orders the devices through the
19 mail, a computer network, a telephonic network, or another electronic network;]

20 (2) if the electronic smoking devices manufacturer licensee also holds a
21 license to act as an electronic smoking devices retailer or a vape shop vendor, transfer
22 electronic smoking devices to inventory for sale under the retail license or vape shop
23 license[; and

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

27 (b) An electronic smoking devices retailer license authorizes the licensee to:

28 (1) sell electronic smoking devices to consumers;

1 (2) buy electronic smoking devices from [an] A LICENSED electronic
2 smoking devices wholesaler distributor [or electronic smoking devices wholesaler
3 importer]; AND

4 (3) if the electronic smoking devices retailer licensee also holds a license to
5 act as an electronic smoking devices manufacturer, sell at retail electronic smoking devices
6 manufactured under the manufacturer license[; and

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

10 (c) An electronic smoking devices wholesaler distributor license [or electronic
11 smoking devices wholesaler importer license] authorizes the licensee to:

12 (1) sell electronic smoking devices to LICENSED electronic smoking devices
13 retailers and LICENSED vape shop vendors;

14 (2) buy electronic smoking devices directly from [an] A LICENSED
15 electronic smoking devices manufacturer [and an], A LICENSED electronic smoking devices
16 wholesaler distributor, or A LICENSED electronic smoking devices wholesaler importer;

17 (3) hold electronic smoking devices; and

18 (4) sell electronic smoking devices to another licensed electronic smoking
19 devices wholesaler distributor or electronic smoking devices wholesaler importer.

20 (d) A vape shop vendor license authorizes the licensee to:

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

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

25 (3) buy electronic smoking devices from [an electronic smoking devices
26 manufacturer, an] A LICENSED electronic smoking devices wholesaler distributor[, or an
27 electronic smoking devices wholesaler importer].

28 **(E) AN ELECTRONIC SMOKING DEVICES WHOLESALER IMPORTER LICENSE**
29 **AUTHORIZES THE LICENSEE TO:**

30 **(1) SELL ELECTRONIC SMOKING DEVICES TO A LICENSED**
31 **ELECTRONIC SMOKING DEVICES WHOLESALER DISTRIBUTOR OR A LICENSED**
32 **ELECTRONIC SMOKING DEVICES WHOLESALER IMPORTER;**

1 **(2) BUY ELECTRONIC SMOKING DEVICES DIRECTLY FROM A**
2 **LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER, A LICENSED**
3 **ELECTRONIC SMOKING DEVICES WHOLESALER IMPORTER, OR A LICENSED**
4 **ELECTRONIC SMOKING DEVICES WHOLESALER DISTRIBUTOR; AND**

5 **(3) HOLD ELECTRONIC SMOKING DEVICES.**

6 16.7–204.1.

7 (a) A retail **OR VAPE SHOP VENDOR** licensee shall post a sign in a location that
8 is clearly visible to the consumer that states:

9 “No person under the age of 21 may be sold tobacco products without military
10 identification”.

11 (b) The sign required under this section shall be written in letters at least
12 one-half inch high.

13 16.7–207.

14 (a) Subject to the hearing provisions of § 16.7–208 of this subtitle, the Executive
15 Director may deny a license to an applicant, reprimand a licensee, or suspend or revoke a
16 license if the applicant or licensee:

17 (1) fraudulently or deceptively obtains or attempts to obtain a license for
18 the applicant, licensee, or another person;

19 (2) fraudulently or deceptively uses a license;

20 (3) buys electronic smoking devices for resale:

21 (i) in violation of a license; or

22 (ii) from a person [that is not a licensed electronic smoking devices
23 manufacturer or a licensed electronic smoking devices wholesaler] **IN VIOLATION OF §**
24 **16.7–211(A) OF THIS SUBTITLE;**

25 (4) is convicted, under the laws of the United States or of any other state,
26 of:

27 (i) a felony; or

28 (ii) a misdemeanor that is a crime of moral turpitude and is directly
29 related to the fitness and qualification of the applicant or licensee;

1 (5) violates federal, State, or local law regarding the sale of electronic
2 smoking devices; or

3 (6) violates this title, Title 16, or Title 16.5 of this article or regulations
4 adopted under these titles.

5 (b) Subject to the hearing provisions of § 16.7–208 of this subtitle, the Executive
6 Director shall deny a license to any applicant that has had a license revoked under this
7 section until:

8 (1) 1 year has passed since the license was revoked; and

9 (2) [it] **THE APPLICANT** satisfactorily [appears] **DEMONSTRATES** to the
10 Executive Director that the applicant will comply with this title and any regulations
11 adopted under this title.

12 (c) Prior to the issuance or renewal of any license, the Executive Director **OR THE**
13 **ATTORNEY GENERAL** shall conduct an investigation with regard to:

14 (1) the applicant;

15 (2) the business to be operated; and

16 (3) the facts set forth in the application.

17 16.7–209.

18 (a) Subject to the notice requirement of subsection (c) of this section, if a licensee
19 engages in an act or omission that is grounds for discipline under § 16.7–207 of this subtitle,
20 the Executive Director may suspend the license for a consecutive period of time that:

21 (1) for a first offense, is not less than 5 and not more than 20 business days;
22 and

23 (2) for a subsequent offense, is not less than 20 business days and not more
24 than 6 months.

25 (b) Subject to the notice requirement under subsection (c) of this section, the
26 Executive Director may revoke a license if a licensee willfully [and persistently] engages
27 in an act or omission that is grounds for discipline under § 16.7–207(a) of this subtitle.

28 (c) If a license is suspended or revoked under this section:

29 (1) the Executive Director shall give the licensee notice of the suspension
30 or revocation; and

1 (2) the suspension or revocation of a license may not bar or abate a
2 disciplinary action under this section.

3 (d) The transfer, renewal, or expiration of a license may not bar or abate a
4 disciplinary action under this section.

5 (e) (1) (i) Except as provided in subparagraph (ii) of this paragraph, if a
6 license issued under the provisions of this subtitle is suspended or revoked by the Executive
7 Director, the licensee may, before the effective date of the suspension or revocation, petition
8 the Executive Director for permission to make an offer of compromise consisting of a sum
9 of money in lieu of serving the suspension or revocation.

10 (ii) Subparagraph (i) of this paragraph does not apply if a license is
11 suspended or revoked for a violation of § 24–305 of the Health – General Article, or any
12 other federal, State, or local law prohibiting the sale of electronic smoking devices to
13 individuals under the age of 21 years.

14 (2) Money paid in lieu of suspension or revocation shall be paid into the
15 General Fund of the State.

16 (3) [An offer of compromise may not exceed \$2,000 for retail licensees or
17 \$50,000 for other licensees.

18 (4)] The Executive Director may accept the offer of compromise if:

19 (i) the public welfare and morals would not be impaired by allowing
20 the licensee to operate during the period set for the suspension or revocation; and

21 (ii) the payment of the sum of money will achieve the desired
22 disciplinary purposes.

23 [(5)] (4) The Executive Director may adopt regulations to carry out this
24 subsection.

25 16.7–213.1.

26 (a) The Maryland Department of Health **OR THE EXECUTIVE DIRECTOR** may
27 conduct unannounced inspections of licensed retailers **OR LICENSED VAPE SHOP**
28 **VENDORS** to ensure the licensee's compliance with the provisions of this title and § 10–107
29 of the Criminal Law Article.

30 (b) The Maryland Department of Health may use an individual under the age of
31 21 years to assist in conducting an inspection under this section.

32 **SUBTITLE 3. CERTIFICATION REQUIREMENTS FOR ELECTRONIC SMOKING**
33 **DEVICES MANUFACTURERS.**

1 **16.7-301.**

2 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (B) (1) "BRAND FAMILY" MEANS ALL STYLES AND FLAVORS OF
5 ELECTRONIC SMOKING DEVICES SOLD UNDER THE SAME TRADEMARK, REGARDLESS
6 OF WHETHER THE ELECTRONIC SMOKING DEVICES ARE DIFFERENTIATED FROM
7 ONE ANOTHER BY MEANS OF ADDITIONAL MODIFIERS OR DESCRIPTORS DEPICTING
8 FLAVORS, SHAPES, METHOD OF DELIVERY, DEVICE MODEL, POTENCY, NICOTINE
9 LEVEL, OR ANY OTHER DIFFERENTIATION.

10 (2) "BRAND FAMILY" INCLUDES ANY USE OF A BRAND NAME,
11 TRADEMARK, LOGO, SYMBOL, MOTTO, SELLING MESSAGE, RECOGNIZABLE PATTERN
12 OF COLORS, OR ANY OTHER INDICIA OF PRODUCT IDENTIFICATION IDENTICAL OR
13 SIMILAR TO, OR IDENTIFIABLE WITH, A PREVIOUSLY KNOWN BRAND OF ELECTRONIC
14 SMOKING DEVICES, OTHER TOBACCO PRODUCTS, OR ELECTRONIC SMOKING DEVICE
15 PRODUCTS.

16 (C) "BRAND STYLE" MEANS EACH INDIVIDUAL STYLE OR FLAVOR OF AN
17 ELECTRONIC SMOKING DEVICE SOLD WITHIN A BRAND FAMILY, BUT
18 DIFFERENTIATED FROM ONE ANOTHER BY MEANS OF ADDITIONAL ADJECTIVES,
19 MODIFIERS, OR DESCRIPTORS, INCLUDING THOSE DEPICTING FLAVORS, SHAPES,
20 METHOD OF DELIVERY, DEVICE MODEL, POTENCY, OR NICOTINE LEVEL.

21 (D) "DIRECTORY" MEANS THE LIST PUBLISHED BY THE ATTORNEY
22 GENERAL OF APPROVED ELECTRONIC SMOKING DEVICES MANUFACTURERS THAT
23 HAVE SUBMITTED A CERTIFICATION IN ACCORDANCE WITH THIS SUBTITLE AND THE
24 BRAND FAMILIES AND BRAND STYLES OF THEIR ELECTRONIC SMOKING DEVICES
25 THAT HAVE BEEN DETERMINED BY THE ATTORNEY GENERAL AS CONFORMING TO
26 THE REQUIREMENTS OF § 16.7-302 OF THIS SUBTITLE.

27 **16.7-302.**

28 (A) (1) AN ELECTRONIC SMOKING DEVICES MANUFACTURER WHOSE
29 PRODUCTS ARE SOLD IN THE STATE SHALL EXECUTE AND DELIVER, ON A FORM
30 PRESCRIBED BY THE ATTORNEY GENERAL, A CERTIFICATION TO THE ATTORNEY
31 GENERAL NOT LATER THAN JUNE 30 EACH YEAR, CERTIFYING UNDER PENALTY OF
32 PERJURY THAT, AS OF THE DATE OF THE CERTIFICATION, THE ELECTRONIC
33 SMOKING DEVICES MANUFACTURER HAS RECEIVED AUTHORIZATION FROM THE
34 U.S. FOOD AND DRUG ADMINISTRATION TO SELL ITS ELECTRONIC SMOKING
35 DEVICES IN THE UNITED STATES.

1 **(2) FOR EACH CERTIFICATION SUBMITTED UNDER PARAGRAPH (1)**
2 **OF THIS SUBSECTION AN ELECTRONIC SMOKING DEVICES MANUFACTURER SHALL**
3 **PAY TO THE ATTORNEY GENERAL A FEE OF \$1,000.**

4 **(B) IN THE CERTIFICATION SUBMITTED TO THE ATTORNEY GENERAL**
5 **UNDER THIS SECTION, THE ELECTRONIC SMOKING DEVICES MANUFACTURER**
6 **SHALL:**

7 **(1) IDENTIFY ALL OF ITS ELECTRONIC SMOKING DEVICE BRAND**
8 **FAMILIES THAT ARE BEING SOLD IN THE UNITED STATES AS OF THE DATE OF**
9 **CERTIFICATION;**

10 **(2) IDENTIFY ANY ELECTRONIC SMOKING DEVICES BRAND FAMILY**
11 **THAT THE ELECTRONIC SMOKING DEVICES MANUFACTURER SEEKS TO SELL IN THE**
12 **STATE IN THE UPCOMING FISCAL YEAR;**

13 **(3) INDICATE WITH AN ASTERISK ANY BRAND FAMILY SOLD IN THE**
14 **STATE DURING THE PRECEDING 3 CALENDAR YEARS THAT ARE NO LONGER SOLD IN**
15 **THE STATE AS OF THE DATE OF CERTIFICATION;**

16 **(4) IDENTIFY BY NAME AND ADDRESS ANY OTHER MANUFACTURER OF**
17 **SUCH BRAND FAMILIES IN THE PRECEDING OR CURRENT FISCAL YEAR;**

18 **(5) INDICATE WHETHER THE ELECTRONIC SMOKING DEVICES BRAND**
19 **FAMILY BEING CERTIFIED INCLUDES AN AEROSOLIZING DEVICE OR THE JUICE,**
20 **SALT, OR OTHER CONSUMABLE SUBSTANCE TO BE AEROSOLIZED OR BOTH;**

21 **(6) INDICATE BY NUMBER THE DECISION SUMMARY FOR THE MARKET**
22 **ORDER AUTHORIZING THE ELECTRONIC SMOKING DEVICE TO BE SOLD IN THE**
23 **UNITED STATES AND INCLUDE A COPY OF THE AUTHORIZATION BY THE U.S. FOOD**
24 **AND DRUG ADMINISTRATION; AND**

25 **(7) IDENTIFY ANY OTHER INFORMATION REQUIRED BY THE**
26 **ATTORNEY GENERAL TO CONFIRM THAT THE ELECTRONIC SMOKING DEVICES**
27 **MANUFACTURER AND ITS BRAND FAMILIES ARE IN COMPLIANCE WITH THIS TITLE**
28 **AND ANY OTHER APPLICABLE FEDERAL, STATE, AND LOCAL LAWS.**

29 **(C) AN ELECTRONIC SMOKING DEVICES MANUFACTURER SHALL FURTHER**
30 **CERTIFY THAT THE ELECTRONIC SMOKING DEVICES MANUFACTURER:**

1 **(1) IS REGISTERED TO DO BUSINESS IN THE STATE OR HAS**
2 **APPOINTED A RESIDENT AGENT FOR SERVICE OF PROCESS AND PROVIDED NOTICE**
3 **OF THE APPOINTMENT AS REQUIRED UNDER § 16.7-304 OF THIS SUBTITLE;**

4 **(2) IS LICENSED BY THE EXECUTIVE DIRECTOR TO OPERATE AS AN**
5 **ELECTRONIC SMOKING DEVICES MANUFACTURER IN THE STATE; AND**

6 **(3) IS IN FULL COMPLIANCE WITH ALL APPLICABLE LOCAL, STATE,**
7 **AND FEDERAL LAWS REGARDING THE MANUFACTURE AND SALE OF ELECTRONIC**
8 **SMOKING DEVICES.**

9 **(D) (1) AN ELECTRONIC SMOKING DEVICES MANUFACTURER MAY NOT**
10 **INCLUDE A BRAND FAMILY OR BRAND STYLE IN ITS CERTIFICATION UNLESS IT**
11 **AFFIRMS UNDER PENALTY OF PERJURY THAT:**

12 **(I) IT IS THE ENTITY THAT FABRICATES, MANUFACTURES,**
13 **MIXES, OR OTHERWISE PRODUCES THE ELECTRONIC SMOKING DEVICES INCLUDED**
14 **IN THE CERTIFICATION; AND**

15 **(II) TO THE BEST OF THE ELECTRONIC SMOKING DEVICES**
16 **MANUFACTURER'S KNOWLEDGE, NO OTHER ELECTRONIC SMOKING DEVICES**
17 **MANUFACTURER IS FABRICATING, MANUFACTURING, MIXING, OR OTHERWISE**
18 **PRODUCING ELECTRONIC SMOKING DEVICES FOR SALE IN THE UNITED STATES**
19 **WITH THE SAME BRAND NAME AS A BRAND FAMILY INCLUDED IN THE**
20 **CERTIFICATION.**

21 **(2) NOTHING IN THIS SECTION MAY BE CONSTRUED AS LIMITING OR**
22 **OTHERWISE AFFECTING THE STATE'S RIGHT TO REFUSE TO INCLUDE AN**
23 **ELECTRONIC SMOKING DEVICE ON THE DIRECTORY IF THE ATTORNEY GENERAL**
24 **HAS REASON TO BELIEVE THAT A BRAND FAMILY OR BRAND STYLE INCLUDED IN A**
25 **CERTIFICATION IS AN ELECTRONIC SMOKING DEVICE PRODUCED BY A DIFFERENT**
26 **ELECTRONIC SMOKING DEVICES MANUFACTURER.**

27 **(E) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN**
28 **ELECTRONIC SMOKING DEVICES MANUFACTURER THAT HAS NOT PREVIOUSLY**
29 **SUBMITTED A CERTIFICATION WITH THE STATE OR THAT IS NOT LISTED IN THE**
30 **DIRECTORY MAY SUBMIT AN INITIAL CERTIFICATION WITH THE ATTORNEY**
31 **GENERAL AT ANY POINT DURING THE YEAR.**

32 **(2) AN ELECTRONIC SMOKING DEVICES MANUFACTURER THAT**
33 **SUBMITS AN INITIAL CERTIFICATION UNDER PARAGRAPH (1) OF THIS SUBSECTION**
34 **MUST SUBMIT AN ANNUAL CERTIFICATION IN ACCORDANCE WITH SUBSECTION (A)**
35 **OF THIS SECTION, UNLESS THE INITIAL CERTIFICATION WAS SUBMITTED WITHIN 90**

1 DAYS OF THE DATE THE ANNUAL SUBMISSION IS REQUIRED UNDER SUBSECTION (A)
2 OF THIS SECTION.

3 (F) AN ELECTRONIC SMOKING DEVICES MANUFACTURER LISTED ON THE
4 DIRECTORY SHALL UPDATE ITS LISTING ON THE DIRECTORY TO REFLECT ANY
5 ADDITION, DISCONTINUANCE, OR MODIFICATION TO ITS LISTED ELECTRONIC
6 SMOKING DEVICE BRAND FAMILIES BY EXECUTING AND DELIVERING A
7 SUPPLEMENTAL CERTIFICATION TO THE ATTORNEY GENERAL NOT LESS THAN 30
8 CALENDAR DAYS PRIOR TO THE CHANGE.

9 **16.7-303.**

10 (A) EXCEPT AS PROVIDED IN SUBSECTION (B)(1) AND (2) OF THIS SECTION,
11 THE ATTORNEY GENERAL SHALL DEVELOP AND MAKE AVAILABLE FOR PUBLIC
12 INSPECTION A DIRECTORY LISTING ALL ELECTRONIC SMOKING DEVICES
13 MANUFACTURERS THAT HAVE PROVIDED CURRENT AND ACCURATE
14 CERTIFICATIONS COMPLYING WITH THE REQUIREMENTS OF § 16.7-302 OF THIS
15 SUBTITLE AND ALL APPROVED ELECTRONIC SMOKING DEVICE BRAND FAMILIES AND
16 BRAND STYLES INCLUDED IN THE CERTIFICATIONS.

17 (B) (1) THE ATTORNEY GENERAL MAY NOT INCLUDE OR RETAIN ON THE
18 DIRECTORY ANY BRAND FAMILIES OR BRAND STYLES OF ANY ELECTRONIC SMOKING
19 DEVICES MANUFACTURER THAT FAILS TO PROVIDE THE REQUIRED CERTIFICATION,
20 FEE, OR WHOSE CERTIFICATION THE ATTORNEY GENERAL DETERMINES IS NOT IN
21 COMPLIANCE WITH § 16.7-302 OF THIS SUBTITLE, UNLESS THE ATTORNEY
22 GENERAL HAS DETERMINED THAT THE VIOLATION HAS BEEN CURED TO THE
23 SATISFACTION OF THE ATTORNEY GENERAL.

24 (2) THE ATTORNEY GENERAL SHALL UPDATE THE DIRECTORY AS
25 NECESSARY TO CORRECT MISTAKES AND TO ADD OR REMOVE AN ELECTRONIC
26 SMOKING DEVICES MANUFACTURER OR ANY BRAND FAMILY OR BRAND STYLE OF AN
27 ELECTRONIC SMOKING DEVICE TO KEEP THE DIRECTORY IN CONFORMITY WITH THE
28 REQUIREMENTS OF THIS SUBTITLE.

29 (3) EACH LICENSED ELECTRONIC SMOKING DEVICES WHOLESALER
30 DISTRIBUTOR AND LICENSED ELECTRONIC SMOKING DEVICES WHOLESALER
31 IMPORTER SHALL PROVIDE TO THE ATTORNEY GENERAL, AND UPDATE AS
32 NECESSARY, CURRENT CONTACT INFORMATION FOR THE PURPOSE OF RECEIVING
33 ANY NOTIFICATIONS THAT MAY BE REQUIRED BY THIS SUBTITLE, INCLUDING A
34 POINT OF CONTACT PERSON, A PHYSICAL LOCATION, AND AN ELECTRONIC MAIL
35 ADDRESS.

1 **(C) AN ELECTRONIC SMOKING DEVICES MANUFACTURER SHALL MAINTAIN**
2 **ALL INVOICES AND DOCUMENTATION OF SALES, ALL APPROVAL LETTERS AND**
3 **UNDERLYING APPLICATIONS AND MATERIALS, AND ANY OTHER INFORMATION**
4 **RELIED ON FOR ITS CERTIFICATION FOR A MINIMUM PERIOD OF 5 YEARS, UNLESS**
5 **OTHERWISE REQUIRED BY LAW TO MAINTAIN THEM FOR A GREATER PERIOD OF**
6 **TIME.**

7 **(D) AN INDIVIDUAL MAY NOT SELL, OFFER FOR SALE, POSSESS FOR SALE IN**
8 **THE STATE, OR IMPORT FOR PERSONAL CONSUMPTION IN THE STATE, ANY:**

9 **(1) ELECTRONIC SMOKING DEVICE, BRAND FAMILY, OR BRAND STYLE**
10 **NOT INCLUDED ON THE DIRECTORY; OR**

11 **(2) ELECTRONIC SMOKING DEVICES MANUFACTURED BY AN**
12 **ELECTRONIC SMOKING DEVICES MANUFACTURER THAT IS NOT INCLUDED ON THE**
13 **DIRECTORY.**

14 **16.7-304.**

15 **(A) (1) ANY NONRESIDENT OR FOREIGN ELECTRONIC SMOKING DEVICES**
16 **MANUFACTURER THAT HAS NOT REGISTERED TO DO BUSINESS IN THE STATE AS A**
17 **FOREIGN CORPORATION OR BUSINESS ENTITY SHALL APPOINT, AND CONTINUALLY**
18 **ENGAGE WITHOUT INTERRUPTION, THE SERVICES OF AN AGENT IN THE STATE TO**
19 **ACT AS AN AGENT FOR THE SERVICE OF PROCESS ON THE NONRESIDENT OR**
20 **FOREIGN ELECTRONIC SMOKING DEVICES MANUFACTURER, BEFORE ITS BRAND**
21 **FAMILIES OR BRAND STYLES MAY BE INCLUDED OR RETAINED ON THE DIRECTORY**
22 **DESCRIBED IN § 16.7-303 OF THIS SUBTITLE.**

23 **(2) ANY PROCESS AND ANY ACTION OR PROCEEDING AGAINST A**
24 **NONRESIDENT OR FOREIGN ELECTRONIC SMOKING DEVICES MANUFACTURER**
25 **CONCERNING OR ARISING OUT OF THE ENFORCEMENT OF THIS SUBTITLE OR THIS**
26 **ARTICLE MAY BE SERVED IN ANY MANNER AUTHORIZED BY LAW.**

27 **(3) (I) THE SERVICE OF PROCESS ON THE DESIGNATED AGENT**
28 **SHALL CONSTITUTE LEGAL AND VALID SERVICE OF PROCESS ON THE ELECTRONIC**
29 **SMOKING DEVICES MANUFACTURER.**

30 **(II) THE ELECTRONIC SMOKING DEVICES MANUFACTURER**
31 **SHALL PROVIDE, TO THE SATISFACTION OF THE EXECUTIVE DIRECTOR AND THE**
32 **ATTORNEY GENERAL, THE NAME, ADDRESS, TELEPHONE NUMBER, AND PROOF OF**
33 **THE APPOINTMENT AND AVAILABILITY OF THE AGENT TO THE EXECUTIVE**
34 **DIRECTOR AND THE ATTORNEY GENERAL.**

1 **(B) (1) THE ELECTRONIC SMOKING DEVICES MANUFACTURER SHALL**
2 **PROVIDE:**

3 **(I) NOTICE TO THE EXECUTIVE DIRECTOR AND THE ATTORNEY**
4 **GENERAL NOT LESS THAN 30 CALENDAR DAYS PRIOR TO THE TERMINATION OF THE**
5 **AUTHORITY OF AN AGENT; AND**

6 **(II) PROOF TO THE SATISFACTION OF THE ATTORNEY GENERAL**
7 **OF THE APPOINTMENT OF A NEW AGENT NOT LESS THAN 5 CALENDAR DAYS PRIOR**
8 **TO THE TERMINATION OF AN EXISTING AGENT APPOINTMENT.**

9 **(2) IF AN AGENT TERMINATES AN AGENCY APPOINTMENT, THE**
10 **ELECTRONIC SMOKING DEVICES MANUFACTURER SHALL:**

11 **(I) NOTIFY THE EXECUTIVE DIRECTOR AND THE ATTORNEY**
12 **GENERAL OF THE TERMINATION WITHIN 5 CALENDAR DAYS; AND**

13 **(II) INCLUDE PROOF TO THE SATISFACTION OF THE ATTORNEY**
14 **GENERAL OF THE APPOINTMENT OF A NEW AGENT.**

15 **16.7-305.**

16 **(A) (1) NOT LATER THAN 21 DAYS AFTER THE END OF EACH CALENDAR**
17 **MONTH, AND MORE FREQUENTLY IF SO DIRECTED BY THE EXECUTIVE DIRECTOR,**
18 **EACH LICENSED ELECTRONIC SMOKING DEVICES WHOLESALER DISTRIBUTOR**
19 **SHALL SUBMIT TRUE AND ACCURATE INFORMATION IN THE FORM AND MANNER THE**
20 **EXECUTIVE DIRECTOR REQUIRES TO FACILITATE COMPLIANCE WITH THIS**
21 **SUBTITLE, INCLUDING A LIST BY BRAND FAMILY AND BRAND STYLE OF THE TOTAL**
22 **QUANTITY OF ELECTRONIC SMOKING DEVICES SOLD BY THE LICENSED ELECTRONIC**
23 **SMOKING DEVICES WHOLESALER TO A LICENSED ELECTRONIC SMOKING DEVICE**
24 **RETAILER OR LICENSED VAPE SHOP VENDOR DURING THE PREVIOUS CALENDAR**
25 **MONTH.**

26 **(2) A LICENSED ELECTRONIC SMOKING DEVICES WHOLESALER**
27 **DISTRIBUTOR SHALL MAINTAIN AND MAKE AVAILABLE TO THE EXECUTIVE**
28 **DIRECTOR AND THE COMPTROLLER FOR A PERIOD OF 5 YEARS ALL INVOICES AND**
29 **DOCUMENTATION OF SALES OF ALL ELECTRONIC SMOKING DEVICES AND ANY**
30 **OTHER INFORMATION RELIED ON IN REPORTING TO THE EXECUTIVE DIRECTOR**
31 **AND THE COMPTROLLER.**

32 **(B) (1) THE EXECUTIVE DIRECTOR MAY DISCLOSE TO THE ATTORNEY**
33 **GENERAL AND THE COMPTROLLER ANY INFORMATION RECEIVED UNDER THIS**
34 **SUBTITLE AND REQUESTED BY THE ATTORNEY GENERAL OR THE COMPTROLLER**

1 FOR THE PURPOSES OF DETERMINING COMPLIANCE WITH AND ENFORCEMENT OF
2 THE PROVISIONS OF THIS SUBTITLE.

3 (2) THE EXECUTIVE DIRECTOR, THE COMPTROLLER, AND THE
4 ATTORNEY GENERAL, ONLY FOR PURPOSES OF ENFORCEMENT OF THIS TITLE OR
5 CORRESPONDING LAWS OF OTHER STATES:

6 (I) SHALL SHARE WITH EACH OTHER THE INFORMATION
7 RECEIVED UNDER THIS TITLE OR TITLE 11 OF THE TAX – GENERAL ARTICLE; AND

8 (II) MAY SHARE THE INFORMATION WITH OTHER FEDERAL,
9 STATE, OR LOCAL AGENCIES.

10 (C) IN ADDITION TO ANY OTHER INFORMATION REQUIRED TO BE
11 SUBMITTED BY LAW, THE EXECUTIVE DIRECTOR OR THE ATTORNEY GENERAL MAY
12 REQUIRE A LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER, LICENSED
13 ELECTRONIC SMOKING DEVICES WHOLESALER DISTRIBUTOR, LICENSED
14 ELECTRONIC SMOKING DEVICES WHOLESALER IMPORTER, LICENSED ELECTRONIC
15 SMOKING DEVICES RETAILER, OR LICENSED VAPE SHOP VENDOR TO SUBMIT ANY
16 ADDITIONAL INFORMATION, INCLUDING INVOICES, RECEIPTS, CORRESPONDENCE,
17 CONFIRMATIONS OF APPROVAL, MARKETING, ADVERTISING MATERIALS, AND
18 SAMPLES OF PACKAGING OR LABELING OF EACH BRAND FAMILY, AS IS NECESSARY
19 TO ENABLE THE ATTORNEY GENERAL TO DETERMINE WHETHER A LICENSED
20 ELECTRONIC SMOKING DEVICES MANUFACTURER IS IN COMPLIANCE WITH THIS
21 SUBTITLE AND ALL OTHER APPLICABLE FEDERAL, STATE, AND LOCAL LAWS.

22 (D) THE EXECUTIVE DIRECTOR OR THE ATTORNEY GENERAL MAY ADOPT
23 REGULATIONS REQUIRING A LICENSEE TO SUBMIT ANY ADDITIONAL INFORMATION
24 OR DOCUMENTATION AS NECESSARY TO DETERMINE THE ACCURACY OF ANY
25 INFORMATION SUBMITTED OR OTHERWISE PROMOTE COMPLIANCE WITH THIS
26 SUBTITLE.

27 16.7–306.

28 (A) (1) IN ADDITION TO OR INSTEAD OF ANY OTHER CIVIL OR CRIMINAL
29 REMEDY PROVIDED BY LAW, ON A DETERMINATION THAT A LICENSED ELECTRONIC
30 SMOKING DEVICES WHOLESALER DISTRIBUTOR HAS VIOLATED § 16.7–303(D) OR §
31 16.7–305(A) OF THIS SUBTITLE OR ANY REGULATION ADOPTED UNDER THIS TITLE,
32 THE EXECUTIVE DIRECTOR MAY REVOKE OR SUSPEND THE LICENSE OF A LICENSED
33 ELECTRONIC SMOKING DEVICES WHOLESALER DISTRIBUTOR IN THE MANNER
34 PROVIDED IN §§ 16.7–208 AND 16.7–209 OF THIS TITLE.

1 **(2) EACH SALE OF AND EACH OFFER TO SELL ELECTRONIC SMOKING**
2 **DEVICES IN VIOLATION OF § 16.7-303(D) OF THIS SUBTITLE SHALL CONSTITUTE A**
3 **SEPARATE VIOLATION.**

4 **(3) THE EXECUTIVE DIRECTOR MAY ALSO IMPOSE A CIVIL PENALTY**
5 **IN AN AMOUNT NOT TO EXCEED THE GREATER OF:**

6 **(I) 500% OF THE RETAIL VALUE OF THE ELECTRONIC SMOKING**
7 **DEVICES SOLD OR OFFERED FOR SALE; OR**

8 **(II) \$5,000 ON A DETERMINATION OF VIOLATION OF §**
9 **16.7-303(D) OF THIS SUBTITLE OR ANY REGULATIONS ADOPTED UNDER THAT**
10 **SECTION.**

11 **(4) A PENALTY IMPOSED UNDER THIS SECTION SHALL BE IMPOSED IN**
12 **THE MANNER PROVIDED UNDER § 16.7-209 OF THIS TITLE.**

13 **(B) (1) ANY ELECTRONIC SMOKING DEVICES THAT HAVE BEEN SOLD,**
14 **OFFERED FOR SALE, OR POSSESSED FOR SALE IN THE STATE, OR IMPORTED FOR**
15 **PERSONAL CONSUMPTION IN THE STATE IN VIOLATION OF § 16.7-303(D) OF THIS**
16 **SUBTITLE SHALL BE DEEMED CONTRABAND UNDER §§ 13-836, 13-837, AND 13-839**
17 **OF THE TAX - GENERAL ARTICLE, AND THOSE ELECTRONIC SMOKING DEVICES**
18 **SHALL BE SUBJECT TO SEIZURE AND FORFEITURE AS PROVIDED IN THOSE**
19 **SECTIONS.**

20 **(2) SEIZED AND FORFEITED ELECTRONIC SMOKING DEVICES MAY**
21 **NOT BE RESOLD AND MAY BE DESTROYED.**

22 **(C) THE ATTORNEY GENERAL, ON BEHALF OF THE EXECUTIVE DIRECTOR,**
23 **MAY SEEK AN INJUNCTION TO RESTRAIN A THREATENED OR ACTUAL VIOLATION OF**
24 **§ 16.7-303(D) OR § 16.7-305(A) OR (D) OF THIS SUBTITLE BY A LICENSED**
25 **ELECTRONIC SMOKING DEVICES WHOLESALER DISTRIBUTOR AND COMPEL THE**
26 **LICENSED ELECTRONIC SMOKING DEVICES WHOLESALER DISTRIBUTOR TO COMPLY**
27 **WITH THOSE SECTIONS.**

28 **(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A**
29 **PERSON WHO SELLS, DISTRIBUTES, ACQUIRES, HOLDS, OWNS, POSSESSES,**
30 **TRANSPORTS, IMPORTS, OR CAUSES TO BE IMPORTED ELECTRONIC SMOKING**
31 **DEVICES FOR RESALE TO A CONSUMER THAT THE PERSON KNOWS OR SHOULD HAVE**
32 **KNOWN ARE INTENDED FOR DISTRIBUTION OR SALE IN THE STATE IN VIOLATION OF**
33 **§ 16.7-303(D) OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR, AND ON**
34 **CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$5,000 OR IMPRISONMENT NOT**
35 **EXCEEDING 1 YEAR OR BOTH.**

1 **(2) THE PENALTIES IN PARAGRAPH (1) OF THIS SUBSECTION DO NOT**
2 **APPLY TO A PERSON WHO POSSESSES LESS THAN \$100 WORTH OF ELECTRONIC**
3 **SMOKING DEVICES SOLELY FOR PERSONAL CONSUMPTION AND NOT FOR RESALE TO**
4 **A CONSUMER.**

5 **16.7-307.**

6 **(A) A DETERMINATION BY THE ATTORNEY GENERAL TO OMIT OR TO**
7 **DELETE FROM THE DIRECTORY DESCRIBED IN § 16.7-303(A) OF THIS SUBTITLE A**
8 **BRAND FAMILY, A BRAND STYLE, OR AN ELECTRONIC SMOKING DEVICES**
9 **MANUFACTURER SHALL BE SUBJECT TO REVIEW IN ACCORDANCE WITH TITLE 10,**
10 **SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.**

11 **(B) THE ATTORNEY GENERAL AND THE EXECUTIVE DIRECTOR MAY ADOPT**
12 **REGULATIONS NECESSARY TO CARRY OUT THIS SUBTITLE.**

13 **(C) IN ANY ACTION BROUGHT BY THE STATE TO ENFORCE THIS SUBTITLE,**
14 **THE STATE SHALL BE ENTITLED TO RECOVER THE COSTS OF INVESTIGATION,**
15 **EXPERT WITNESS FEES, COSTS OF THE ACTION, AND REASONABLE ATTORNEY'S**
16 **FEES.**

17 **(D) (1) IF A COURT OR OTHER ADJUDICATIVE BODY DETERMINES THAT A**
18 **PERSON HAS VIOLATED THIS SUBTITLE, THE COURT OR OTHER ADJUDICATIVE BODY**
19 **SHALL ORDER ANY PROFITS, GAIN, GROSS RECEIPTS, OR OTHER BENEFIT FROM THE**
20 **VIOLATION TO BE PAID TO THE ATTORNEY GENERAL.**

21 **(2) UNLESS OTHERWISE EXPRESSLY PROVIDED, THE REMEDIES OR**
22 **PENALTIES PROVIDED BY THIS SUBTITLE ARE CUMULATIVE TO EACH OTHER, AND**
23 **TO THE REMEDIES OR PENALTIES AVAILABLE UNDER ALL OTHER LAWS OF THE**
24 **STATE.**

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2024.