

# HOUSE BILL 861

C2, Q4, J1

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By: **Delegates Healey, Frush, and Tarlau**  
Introduced and read first time: February 8, 2016  
Assigned to: Economic Matters and Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Electronic Smoking Devices – Regulation and Taxation**

3 FOR the purpose of altering certain definitions and defining certain terms for the purpose  
4 of applying certain provisions of law regulating the sale, manufacture, distribution,  
5 possession, and use of cigarettes and tobacco products and paraphernalia to  
6 electronic smoking devices; altering the definition of “cigarette” for the purpose of  
7 applying the provisions of law related to the tobacco tax to the sale of electronic  
8 smoking devices; repealing a provision of law rendered obsolete as a result of other  
9 provisions of this Act; making conforming changes; and generally relating to the  
10 regulation and taxation of electronic smoking devices.

11 BY repealing and reenacting, without amendments,  
12 Article – Business Regulation  
13 Section 16–101(a)  
14 Annotated Code of Maryland  
15 (2015 Replacement Volume and 2015 Supplement)

16 BY repealing and reenacting, with amendments,  
17 Article – Business Regulation  
18 Section 16–101(b)  
19 Annotated Code of Maryland  
20 (2015 Replacement Volume and 2015 Supplement)

21 BY repealing and reenacting, without amendments,  
22 Article – Commercial Law  
23 Section 11–501(a)  
24 Annotated Code of Maryland  
25 (2013 Replacement Volume and 2015 Supplement)

26 BY repealing and reenacting, with amendments,  
27 Article – Commercial Law

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



- 1 Section 11–501(c) and 11–5A–01  
2 Annotated Code of Maryland  
3 (2013 Replacement Volume and 2015 Supplement)
- 4 BY repealing and reenacting, with amendments,  
5 Article – Criminal Law  
6 Section 10–101, 10–107, and 10–108  
7 Annotated Code of Maryland  
8 (2012 Replacement Volume and 2015 Supplement)
- 9 BY repealing and reenacting, with amendments,  
10 Article – Health – General  
11 Section 24–205, 24–212, 24–501, 24–502, 24–503, 24–507, and 24–510  
12 Annotated Code of Maryland  
13 (2015 Replacement Volume)
- 14 BY repealing  
15 Article – Health – General  
16 Section 24–305  
17 Annotated Code of Maryland  
18 (2015 Replacement Volume)
- 19 BY repealing and reenacting, with amendments,  
20 Article – Labor and Employment  
21 Section 5–608  
22 Annotated Code of Maryland  
23 (2008 Replacement Volume and 2015 Supplement)
- 24 BY repealing and reenacting, with amendments,  
25 Article – Public Utilities  
26 Section 9–206  
27 Annotated Code of Maryland  
28 (2010 Replacement Volume and 2015 Supplement)
- 29 BY repealing and reenacting, with amendments,  
30 Article – Tax – General  
31 Section 2–1601, 2–1602, and 2–1603 to be under the amended subtitle “Subtitle 16.  
32 Tobacco and Electronic Smoking Device Tax Revenue Distribution”; 12–101,  
33 12–103, 12–104, 12–105, 12–201(a), 12–202(a), 12–302, and 12–304 to be  
34 under the amended title “Title 12. Tobacco and Electronic Smoking Device  
35 Tax”; and 13–408, 13–508, 13–509(a), 13–701(b), 13–711, 13–825(h), 13–826,  
36 13–834(c), 13–901(h), 13–1012, 13–1014(b), 13–1015(a), and 13–1104(h)  
37 Annotated Code of Maryland  
38 (2010 Replacement Volume and 2015 Supplement)
- 39 BY repealing and reenacting, without amendments,  
40 Article – Tax – General

1 Section 13–834(a)  
2 Annotated Code of Maryland  
3 (2010 Replacement Volume and 2015 Supplement)

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

6 **Article – Business Regulation**

7 16–101.

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

9 (b) “Cigarette” means:

10 (1) any size or shaped roll for smoking that is made of tobacco or tobacco  
11 mixed with another ingredient and wrapped in paper or in any other material except  
12 tobacco; **OR**

13 (2) **ANY ELECTRONIC SMOKING DEVICE THAT CAN BE USED TO**  
14 **DELIVER NICOTINE OR OTHER SUBSTANCES TO AN INDIVIDUAL INHALING FROM THE**  
15 **DEVICE.**

16 **Article – Commercial Law**

17 11–501.

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

19 (c) (1) “Cigarettes” means:

20 (I) any size or shaped roll for smoking that is made of tobacco or  
21 tobacco mixed with another ingredient and wrapped in paper or in any other material  
22 except tobacco; **OR**

23 (II) **ANY ELECTRONIC SMOKING DEVICE THAT CAN BE USED TO**  
24 **DELIVER NICOTINE OR OTHER SUBSTANCES TO AN INDIVIDUAL INHALING FROM THE**  
25 **DEVICE.**

26 (2) “Cigarettes” does not include cigars.

27 11–5A–01.

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



1 (vi) an object known as a roach clip used to hold burning material,  
2 such as a cigarette that has become too small or too short to be held in the hand;

3 (vii) a chamber pipe;

4 (viii) a carburetor pipe;

5 (ix) an electric pipe;

6 (x) an air-driven pipe;

7 (xi) a chillum;

8 (xii) a bong; [and]

9 (xiii) an ice pipe or chiller; AND

10 **(XIV) AN ELECTRONIC SMOKING DEVICE THAT CAN BE USED TO**  
11 **DELIVER NICOTINE OR OTHER SUBSTANCES TO AN INDIVIDUAL INHALING FROM THE**  
12 **DEVICE.**

13 (d) (1) "Tobacco **OR NICOTINE** product" means a substance containing tobacco  
14 **OR NICOTINE OR SIMILAR SUBSTANCES.**

15 (2) "Tobacco product" includes cigarettes, cigars, smoking tobacco, snuff,  
16 smokeless tobacco, and candy-like products that contain tobacco.

17 (e) "Venereal disease" includes gonorrhea, syphilis, chancroid, and any diseased  
18 condition of the human genitalia caused by, related to, or resulting from a venereal disease.

19 10–107.

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

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

24 (2) sent through the mail.

25 (b) (1) This subsection does not apply to the distribution of a tobacco **OR**  
26 **NICOTINE** product or tobacco **OR NICOTINE** paraphernalia to a minor who is acting solely  
27 as the agent of the minor's employer if the employer distributes tobacco **OR NICOTINE**  
28 products or tobacco **OR NICOTINE** paraphernalia for commercial purposes.

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

4                   (i) a tobacco **OR NICOTINE** product;

5                   (ii) tobacco **OR NICOTINE** paraphernalia; or

6                   (iii) a coupon redeemable for a tobacco **OR NICOTINE** product.

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

8                   (1) purchase for or sell a tobacco **OR NICOTINE** product to a minor; or

9                   (2) distribute tobacco **OR NICOTINE** paraphernalia to a minor.

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

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

16                   (1) \$300 for a first violation;

17                   (2) \$1,000 for a second violation occurring within 2 years after the first  
18 violation; and

19                   (3) \$3,000 for each subsequent violation occurring within 2 years after the  
20 preceding violation.

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

23 10–108.

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

26           (b) This section does not apply to the possession of a tobacco **OR NICOTINE**  
27 product or cigarette rolling paper by a minor who is acting as the agent of the minor's  
28 employer within the scope of employment.

29           (c) A minor may not:

1 (1) use or possess a tobacco **OR NICOTINE** product or cigarette rolling  
2 paper; or

3 (2) obtain or attempt to obtain a tobacco **OR NICOTINE** product or cigarette  
4 rolling paper by using a form of identification that:

5 (i) is falsified; or

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

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

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

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

### 13 Article – Health – General

14 24–205.

15 (a) **(1)** In this section[,"smoking"] **THE FOLLOWING WORDS HAVE THE**  
16 **MEANINGS INDICATED.**

17 **(2) "ELECTRONIC SMOKING DEVICE" MEANS AN ELECTRONIC DEVICE**  
18 **THAT CAN BE USED TO DELIVER NICOTINE OR OTHER SUBSTANCES TO AN**  
19 **INDIVIDUAL INHALING FROM THE DEVICE.**

20 **(3) "SMOKING" means the act of smoking or carrying a burning:**

21 **[(1)] (I) Cigar;**

22 **[(2)] (II) Cigarette;**

23 **[(3)] (III) Pipe; or**

24 **[(4)] (IV) Other tobacco product of any kind.**

25 (b) Every director of a nursing home, health clinic, or physician's office shall make  
26 and carry out a plan that adequately protects the health of nonsmoking patients by  
27 regulating the smoking of tobacco products **OR THE USE OF AN ELECTRONIC SMOKING**  
28 **DEVICE** on the premises.

1 (c) (1) An individual may not smoke **OR USE AN ELECTRONIC SMOKING**  
2 **DEVICE** in any area of a hospital.

3 (2) The hospital director shall provide for the posting and placement of  
4 conspicuous signs that clearly indicate that smoking **OR THE USE OF AN ELECTRONIC**  
5 **SMOKING DEVICE** is not permitted in the hospital.

6 (d) (1) Notwithstanding the provisions of § 24–504 of this title, this section  
7 does not apply to patients who are:

8 (i) In a facility for the treatment of mental disorders as defined in §  
9 10–101(g) of this article;

10 (ii) In a facility where the average patient stay is more than 30 days;  
11 or

12 (iii) In an acute care hospital and the attending physician authorizes  
13 smoking **OR THE USE OF AN ELECTRONIC SMOKING DEVICE**, in writing, as part of the  
14 care for the patient.

15 (2) Smoking **AND THE USE OF AN ELECTRONIC SMOKING DEVICE**  
16 permitted under this section shall be in designated areas that are considered safe and  
17 provide nonsmoking patients, family members, and employees protection from tobacco  
18 smoke **AND SMOKE OR VAPORS FROM AN ELECTRONIC SMOKING DEVICE**.

19 (3) Smoking **AND THE USE OF AN ELECTRONIC SMOKING DEVICE** may  
20 not be permitted where nonsmoking patients sleep.

21 24–212.

22 (A) IN THIS SECTION, “**ELECTRONIC SMOKING DEVICE**” MEANS AN  
23 **ELECTRONIC DEVICE THAT CAN BE USED TO DELIVER NICOTINE OR OTHER**  
24 **SUBSTANCES TO AN INDIVIDUAL INHALING FROM THE DEVICE**.

25 [(a)] (B) The proprietor of a building containing any elevator whose use is  
26 available to the general public shall post a sign prohibiting the smoking of tobacco products  
27 **AND THE USE OF AN ELECTRONIC SMOKING DEVICE** in that elevator. The sign shall  
28 state “Smoking **AND THE USE OF AN ELECTRONIC SMOKING DEVICE** in This Elevator  
29 Is Illegal and Subject to a Penalty Not to Exceed \$25.00”.

30 [(b)] (C) A person may not smoke tobacco products **OR USE AN ELECTRONIC**  
31 **SMOKING DEVICE** in any area prohibited under subsection (a) of this section.

32 [(c)] (D) The Commissioner of Labor and Industry may promulgate rules and  
33 regulations in furtherance of the provisions of this section.



1            ~~[(d)]~~ (E)        Any person who violates any provision of this section is subject to a civil  
2 penalty not to exceed \$25.

3 [24–305.

4            (a)        This section does not apply to a tobacco product that is regulated under Title  
5 16 of the Business Regulation Article.

6            (b)        (1)        Except as provided in paragraph (2) of this subsection, a person may  
7 not sell, distribute, or offer for sale to a minor an electronic device, a component for an  
8 electronic device, or a product used to refill or resupply an electronic device that can be  
9 used to deliver nicotine to the individual inhaling from the device, including an electronic  
10 cigarette, cigar, cigarillo, or pipe.

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

15            (c)        A person that violates this section is subject to a civil penalty of:

16            (1)        Except as provided in item (2) of this subsection, \$300; and

17            (2)        \$500 for any violation occurring within 24 months after a previous  
18 violation.

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

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

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

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

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

30            (ii)       The nature of the violation;

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

32            (iv)      The amount of the civil penalty;

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

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

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

7 1. Is an admission of liability; and

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

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

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

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

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

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

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

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

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

32 24–501.

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

2 (B) **“ELECTRONIC SMOKING DEVICE” MEANS AN ELECTRONIC DEVICE THAT**  
3 **CAN BE USED TO DELIVER NICOTINE OR OTHER SUBSTANCES TO AN INDIVIDUAL**  
4 **INHALING FROM THE DEVICE.**

5 [(b)] (C) “Employee” has the meaning stated in § 5–101 of the Labor and  
6 Employment Article.

7 [(c)] (D) “Employer” has the meaning stated in § 5–101 of the Labor and  
8 Employment Article.

9 [(d)] (E) “Environmental tobacco **OR NICOTINE** smoke” means the complex  
10 mixture formed from [the]:

11 (1) **THE** escaping smoke of a burning tobacco product or smoke exhaled by  
12 the smoker; **OR**

13 (2) **THE ESCAPING SMOKE OR VAPOR FROM AN ELECTRONIC**  
14 **SMOKING DEVICE OR SMOKE OR VAPOR EXHALED BY THE SMOKER.**

15 [(e)] (F) “Indoor area open to the public” means:

16 (1) An indoor area or a portion of an indoor area accessible to the public by  
17 either invitation or permission; or

18 (2) An indoor area of any establishment licensed or permitted under Article  
19 2B of the Code for the sale or possession of alcoholic beverages.

20 [(f)] (G) “Place of employment” has the meaning stated in § 5–101 of the Labor  
21 and Employment Article.

22 [(g)] (H) “Smoking” means [the]:

23 (1) **THE** burning of a lighted cigarette, cigar, pipe, or any other matter or  
24 substance that contains tobacco; **OR**

25 (2) **THE USE OF AN ELECTRONIC SMOKING DEVICE.**

26 24–502.

27 It is the intent of the General Assembly that the State protect the public and  
28 employees from involuntary exposure to environmental tobacco **OR NICOTINE** smoke in  
29 indoor areas open to the public, indoor places of employment, and certain designated  
30 private areas.

1 24-503.

2 The purpose of this subtitle is to preserve and improve the health, comfort, and  
3 environment of the people of the State by limiting exposure to environmental tobacco **OR**  
4 **NICOTINE** smoke.

5 24-507.

6 (a) The Department shall adopt regulations that prohibit environmental tobacco  
7 **OR NICOTINE** smoke in indoor areas open to the public.

8 (b) On or before September 30 of each year, the Department shall report, in  
9 accordance with § 2-1246 of the State Government Article, to the General Assembly on:

10 (1) The enforcement efforts of the Department to eliminate environmental  
11 tobacco **OR NICOTINE** smoke in indoor areas open to the public during the prior year; and

12 (2) The results of these enforcement efforts.

13 24-510.

14 Nothing in this subtitle shall be construed to preempt a county or municipal  
15 government from enacting and enforcing more stringent measures to reduce involuntary  
16 exposure to environmental tobacco **OR NICOTINE** smoke.

## 17 Article – Labor and Employment

18 5-608.

19 (a) Except as provided in § 24-505 of the Health – General Article, an individual  
20 may not smoke **OR USE AN ELECTRONIC SMOKING DEVICE, AS DEFINED IN § 24-501**  
21 **OF THE HEALTH – GENERAL ARTICLE**, in an indoor place of employment.

22 (b) (1) The Department shall adopt regulations that prohibit environmental  
23 tobacco **OR NICOTINE** smoke, as defined in § 24-501 of the Health – General Article, in  
24 indoor places of employment not normally open to the general public.

25 (2) Subject to subsection (c) of this section, a person who violates a  
26 regulation adopted under this subtitle:

27 (i) for a first violation, shall be issued a written reprimand by the  
28 Commissioner or the Commissioner's designee;

29 (ii) for a second violation, is subject to a civil penalty of \$100; and

1 (iii) for each subsequent violation, is subject to a civil penalty not less  
2 than \$250.

3 (c) The Commissioner may waive a penalty established under subsection (b) of  
4 this section, giving consideration to factors that include:

5 (1) the seriousness of the violation; and

6 (2) any demonstrated good faith measures to comply with the provisions of  
7 this subtitle.

8 (d) A penalty collected by the Commissioner under this section shall be paid to  
9 the Cigarette Restitution Fund established under § 7-317 of the State Finance and  
10 Procurement Article.

11 (e) An employer who discharges or discriminates against an employee because  
12 that employee has made a complaint under this section, has given information to the  
13 Department in accordance with this section, has caused to be instituted or is about to cause  
14 to be instituted a proceeding under this section, or has testified or is about to testify in a  
15 proceeding, shall be deemed in violation of this section and shall be subject to a civil penalty  
16 of at least \$2,000 but not more than \$10,000 for each violation.

17 (f) (1) An employee may not:

18 (i) make a groundless or malicious complaint to the Commissioner  
19 or an authorized representative of the Commissioner;

20 (ii) in bad faith, bring an action under this subtitle; or

21 (iii) in bad faith, testify in an action under this subtitle or a  
22 proceeding that relates to the subject of this subtitle.

23 (2) The Commissioner may bring an action for injunctive relief and  
24 damages against a person who violates the provisions of paragraph (1) of this subsection.

## 25 Article – Public Utilities

26 9–206.

27 **(A) IN THIS SECTION, “ELECTRONIC SMOKING DEVICE” MEANS AN**  
28 **ELECTRONIC DEVICE THAT CAN BE USED TO DELIVER NICOTINE OR OTHER**  
29 **SUBSTANCES TO AN INDIVIDUAL INHALING FROM THE DEVICE.**

30 **[(a)] (B)** The owner and operator of an intrastate motor bus carrier shall prohibit  
31 the smoking of tobacco products **AND THE USE OF AN ELECTRONIC SMOKING DEVICE**  
32 while the bus is in public service.



1                   **(2) ANY ELECTRONIC SMOKING DEVICE THAT CAN BE USED TO**  
2 **DELIVER NICOTINE OR OTHER SUBSTANCES TO AN INDIVIDUAL INHALING FROM THE**  
3 **DEVICE.**

4           (c)     “Manufacturer” means a person who acts as a manufacturer as defined in §  
5 16–201 of the Business Regulation Article or as an other tobacco products manufacturer as  
6 defined in § 16.5–101 of the Business Regulation Article.

7           (d)     “Other tobacco product” means:

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

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

12           (e)     “Other tobacco products retailer” means a person authorized under §  
13 16.5–205(b) of the Business Regulation Article to purchase other tobacco products on which  
14 the tobacco **AND ELECTRONIC SMOKING DEVICE** tax has not been paid.

15           (f)     “Sell” means to exchange or transfer, or to make an agreement to exchange or  
16 transfer, title or possession of property, in any manner or by any means, for consideration.

17           (g)     “Tax stamp” means a device in the design and denomination that the  
18 Comptroller authorizes by regulation for the purpose of being affixed to a package of  
19 cigarettes as evidence that the tobacco **AND ELECTRONIC SMOKING DEVICE** tax is paid.

20           (h)     “Tobacconist” means a person authorized under § 16.5–205(e) of the Business  
21 Regulation Article to purchase other tobacco products on which the tobacco **AND**  
22 **ELECTRONIC SMOKING DEVICE** tax has not been paid.

23           (i)     “Unstamped cigarettes” means a package of cigarettes to which tax stamps  
24 are not affixed in the amount and manner required in § 12–304 of this title.

25           (j)     “Wholesale price” means the price for which a wholesaler buys other tobacco  
26 products, exclusive of any discount, trade allowance, rebate, or other reduction.

27           (k)     “Wholesaler” means, unless the context requires otherwise, a person who acts  
28 as a wholesaler as defined in § 16–201 of the Business Regulation Article or as an other  
29 tobacco products wholesaler as defined in § 16.5–101 of the Business Regulation Article.

30 12–103.

31           (a)     A rebuttable presumption exists that any cigarette or other tobacco product in  
32 the State is subject to the tobacco **AND ELECTRONIC SMOKING DEVICE** tax.

1 (b) Cigarettes or other tobacco products are contraband tobacco products if they:

2 (1) are possessed or sold in the State in a manner that is not authorized  
3 under this title or under Title 16 or Title 16.5 of the Business Regulation Article; or

4 (2) are transported by vehicle in the State by a person who does not have,  
5 in the vehicle, the records required by § 16–219 or § 16.5–215 of the Business Regulation  
6 Article for the transportation of cigarettes or other tobacco products.

7 (c) A person who possesses cigarettes or other tobacco products has the burden of  
8 proving that the cigarettes or other tobacco products are not subject to the tobacco **AND**  
9 **ELECTRONIC SMOKING DEVICE** tax.

10 12–104.

11 (a) “Consumer” means a person who possesses cigarettes or other tobacco  
12 products for a purpose other than selling or transporting the cigarettes or other tobacco  
13 products.

14 (b) The tobacco **AND ELECTRONIC SMOKING DEVICE** tax does not apply to:

15 (1) cigarettes that a licensed wholesaler under Title 16 of the Business  
16 Regulation Article is holding for sale outside the State or to a United States armed forces  
17 exchange or commissary;

18 (2) other tobacco products that an other tobacco products wholesaler  
19 licensed under Title 16.5 of the Business Regulation Article is holding for sale outside the  
20 State or to a United States armed forces exchange or commissary; or

21 (3) cigarettes or other tobacco products that:

22 (i) a consumer brings into the State:

23 1. if the quantity brought from another state does not exceed  
24 other tobacco products having a retail value of \$100 or 5 cartons of cigarettes; or

25 2. if the quantity brought from a United States armed forces  
26 installation or reservation does not exceed other tobacco products having a retail value of  
27 \$100 or 5 cartons of cigarettes;

28 (ii) a person is transporting by vehicle in the State if the person has,  
29 in the vehicle, the records required by § 16–219 or § 16.5–215 of the Business Regulation  
30 Article for the transportation of cigarettes or other tobacco products; or

31 (iii) are held in storage in a licensed storage warehouse on behalf of  
32 a licensed cigarette manufacturer or an other tobacco products manufacturer.



1 12-105.

- 2 (a) The tobacco **AND ELECTRONIC SMOKING DEVICE** tax rate for cigarettes is:
- 3 (1) \$1.00 for each package of 10 or fewer cigarettes;
- 4 (2) \$2.00 for each package of at least 11 and not more than 20 cigarettes;
- 5 (3) 10.0 cents for each cigarette in a package of more than 20 cigarettes;
- 6 and
- 7 (4) 10.0 cents for each cigarette in a package of free sample cigarettes.

8 (b) (1) Except as provided in paragraph (2) of this subsection, the tobacco **AND**  
9 **ELECTRONIC SMOKING DEVICE** tax rate for other tobacco products is 30% of the  
10 wholesale price of the tobacco products.

11 (2) (i) In this paragraph, “premium cigars” has the meaning stated in §  
12 16.5-101 of the Business Regulation Article.

13 (ii) Except as provided in subparagraph (iii) of this paragraph, the  
14 tobacco **AND ELECTRONIC SMOKING DEVICE** tax rate for cigars is 70% of the wholesale  
15 price of the cigars.

16 (iii) The tobacco **AND ELECTRONIC SMOKING DEVICE** tax rate for  
17 premium cigars is 15% of the wholesale price of the premium cigars.

18 12-201.

19 (a) A manufacturer shall complete and file with the Comptroller a tobacco **AND**  
20 **ELECTRONIC SMOKING DEVICE** tax return:

21 (1) on or before the 15th day of the month that follows the month in which  
22 the manufacturer distributes in the State free sample cigarettes of the manufacturer; and

23 (2) if the Comptroller so specifies, by regulation, on other dates for each  
24 month in which the manufacturer does not distribute any sample cigarettes.

25 12-202.

26 (a) A wholesaler shall complete and file with the Comptroller a tobacco **AND**  
27 **ELECTRONIC SMOKING DEVICE** tax return:

28 (1) for cigarettes:

1 (i) on or before the 21st day of the month that follows the month in  
2 which the wholesaler has the first possession, in the State, of unstamped cigarettes for  
3 which tax stamps are required; and

4 (ii) if the Comptroller so specifies, by regulation, on other dates for  
5 each month in which the wholesaler does not have the first possession of any unstamped  
6 cigarettes in the State; and

7 (2) for other tobacco products, on or before the 21st day of the month that  
8 follows the month in which the wholesaler has possession of other tobacco products on  
9 which the tobacco **AND ELECTRONIC SMOKING DEVICE** tax has not been paid.

10 12-302.

11 (a) A manufacturer of sample cigarettes shall pay the tobacco **AND ELECTRONIC**  
12 **SMOKING DEVICE** tax on those cigarettes distributed in the State without charge, in the  
13 manner that the Comptroller requires by regulation, with the return that covers the period  
14 in which the manufacturer distributed those cigarettes.

15 (b) The wholesaler who first possesses in the State unstamped cigarettes for  
16 which tax stamps are required shall pay the tobacco **AND ELECTRONIC SMOKING DEVICE**  
17 tax on those cigarettes by buying and affixing tax stamps.

18 (c) The tobacco **AND ELECTRONIC SMOKING DEVICE** tax on other tobacco  
19 products shall be paid by the wholesaler who sells the other tobacco products to a retailer  
20 in the State.

21 (d) (1) A licensed other tobacco products retailer or a licensed tobacconist shall  
22 pay the tobacco **AND ELECTRONIC SMOKING DEVICE** tax on other tobacco products on  
23 which the tobacco **AND ELECTRONIC SMOKING DEVICE** tax has not been paid by filing a  
24 quarterly tax return, with any supporting schedules, on forms provided by the Comptroller  
25 on the following dates covering tax liabilities in the preceding quarter:

26 (i) January 21;

27 (ii) April 21;

28 (iii) July 21; and

29 (iv) October 21.

30 (2) A licensed other tobacco products retailer or a licensed tobacconist  
31 required to file a tax return under paragraph (1) of this subsection shall pay a tobacco **AND**  
32 **ELECTRONIC SMOKING DEVICE** tax at the rate provided in § 12-105(b) of this title based  
33 on the invoice amount charged by the licensed other tobacco products manufacturer,  
34 exclusive of any discount, trade allowance, rebate, or other reduction.

1 12-304.

2 (a) A manufacturer that pays the tobacco **AND ELECTRONIC SMOKING DEVICE**  
3 tax shall indicate prominently on each package of cigarettes that:

4 (1) the package contains sample cigarettes that are not for sale; and

5 (2) all applicable tobacco **AND ELECTRONIC SMOKING DEVICE** taxes on  
6 those cigarettes have been paid.

7 (b) (1) Except as provided in subsection (c) of this section, within 72 hours after  
8 receiving cigarettes in the State and before selling or attempting to sell the cigarettes, a  
9 licensed wholesaler who first possesses the cigarettes shall affix, to the smallest cigarette  
10 package, tax stamps:

11 (i) in a total amount that at least equals the tobacco **AND**  
12 **ELECTRONIC SMOKING DEVICE** tax due on the number of cigarettes in the package; and

13 (ii) in the manner that the Comptroller requires, including placing  
14 the tax stamps on the cigarette package so that the stamps are visible to a buyer.

15 (2) If a tax stamp has been affixed to a package of cigarettes, a person may  
16 not affix the same tax stamp to another package of cigarettes.

17 (c) A licensed wholesaler is not required to affix tax stamps to:

18 (1) sample cigarettes if the cigarette package is marked in accordance with  
19 subsection (a) of this section; or

20 (2) cigarettes that are segregated or marked to indicate that the cigarettes:

21 (i) were received within the immediately preceding 72 hours; or

22 (ii) are being held for a sale or use that is exempt under this title.

23 (d) (1) Except as provided in subsection (c)(2) of this section, a rebuttable  
24 presumption exists that any unstamped cigarettes in the possession of a licensed  
25 wholesaler are possessed in violation of this title.

26 (2) The licensed wholesaler who possesses unstamped cigarettes has the  
27 burden of proving that the cigarettes are not possessed in violation of this title.

28 13-408.

1 (a) If the Comptroller determines that a person has failed to keep the records of  
2 out-of-state cigarette or other tobacco product sales required under § 12-203 of this article,  
3 the Comptroller shall:

4 (1) compute the tobacco **AND ELECTRONIC SMOKING DEVICE** tax as if the  
5 cigarettes or other tobacco products were sold in the State; and

6 (2) assess the tax due.

7 (b) If the Comptroller determines that a person has possessed or transported  
8 cigarettes or other tobacco products on which the tobacco **AND ELECTRONIC SMOKING**  
9 **DEVICE** tax has not been paid as required under Title 12 of this article, the Comptroller  
10 shall assess the tobacco **AND ELECTRONIC SMOKING DEVICE** tax due.

11 13-508.

12 (a) Within 30 days after the date on which a notice of assessment of the  
13 admissions and amusement tax, alcoholic beverage tax, boxing and wrestling tax, income  
14 tax, motor carrier tax, motor fuel tax, public service company franchise tax, financial  
15 institution franchise tax, sales and use tax, or tobacco **AND ELECTRONIC SMOKING**  
16 **DEVICE** tax is mailed, a person or governmental unit against which the assessment is made  
17 may submit to the tax collector:

18 (1) an application for revision of the assessment; or

19 (2) except for the public service company franchise tax, if the assessment  
20 is paid, a claim for refund.

21 (b) If a person or governmental unit fails to submit an application for revision or  
22 claim for refund within the time allowed in subsection (a) of this section, the assessment  
23 becomes final.

24 (c) The Comptroller or an employee of the Comptroller's office expressly  
25 designated by the Comptroller promptly:

26 (1) (i) shall hold an informal hearing on a person's or governmental  
27 unit's admissions and amusement tax, alcoholic beverage tax, boxing and wrestling tax,  
28 income tax, motor carrier tax, motor fuel tax, sales and use tax, or tobacco **AND**  
29 **ELECTRONIC SMOKING DEVICE** tax application for revision or claim for refund under  
30 subsection (a) of this section; and

31 (ii) after the hearing:

32 1. shall act on the application for revision; and

1                                 2.       may assess any additional tax, penalty, and interest due;  
2    and

3                                 (2)       shall mail to the person or governmental unit a notice of final  
4    determination.

5                 (d)       The Department promptly:

6                                 (1)       (i)       shall act on a person's public service company franchise tax or  
7    financial institution franchise tax application for revision under subsection (a) of this  
8    section; or

9                                     (ii)       1.       shall hold an informal hearing after giving reasonable  
10   notice to the person; and

11                                                         2.       after the hearing:

12                                                             A.       shall act on the application for revision; and

13                                                             B.       may assess any additional tax, penalty, and interest due;  
14    and

15                                 (2)       shall mail to the person a notice of final determination.

16    13-509.

17                 (a)       Notwithstanding a person's failure to file a timely application for revision or  
18   claim for refund of an assessment of the admissions and amusement tax, alcoholic beverage  
19   tax, boxing and wrestling tax, income tax, motor carrier tax, motor fuel tax, sales and use  
20   tax, or tobacco **AND ELECTRONIC SMOKING DEVICE** tax under § 13-508(a) of this subtitle,  
21   the Comptroller or the Comptroller's designee may issue an order decreasing or abating an  
22   assessment to correct an erroneous assessment.

23    13-701.

24                 (b)       (1)       If a person fails to pay alcoholic beverage tax, financial institution  
25   franchise tax, income tax, or tobacco **AND ELECTRONIC SMOKING DEVICE** tax when  
26   required under this article, the tax collector shall assess a penalty not exceeding 25% of the  
27   unpaid tax.

28                                 (2)       If a person fails to file a motor carrier tax return or motor fuel tax return  
29   when required under this article, the Comptroller shall assess a penalty not exceeding \$25.

30    13-711.

1 If a person willfully fails to keep any record required under § 12–203 of this article,  
2 the Comptroller may assess a penalty not exceeding 25% of the unpaid tobacco **AND**  
3 **ELECTRONIC SMOKING DEVICE** tax.

4 13–825.

5 (h) (1) The Comptroller may require a person subject to the tobacco **AND**  
6 **ELECTRONIC SMOKING DEVICE** tax to post security for the tax in the following amounts:

7 (i) for a manufacturer or wholesaler:

8 1. \$10,000, plus

9 2. the amount, if any, by which the tobacco **AND**  
10 **ELECTRONIC SMOKING DEVICE** tax due for any 1 month exceeds \$10,000;

11 (ii) for a subwholesaler or vending machine operator:

12 1. \$1,000, plus

13 2. the amount, if any, by which the tobacco **AND**  
14 **ELECTRONIC SMOKING DEVICE** tax due for any 1 month exceeds \$1,000; and

15 (iii) for an other tobacco products wholesaler:

16 1. \$5,000, plus

17 2. the amount, if any, by which the tobacco **AND**  
18 **ELECTRONIC SMOKING DEVICE** tax due for any 1 month exceeds \$5,000.

19 (2) Except as provided in paragraph (5) of this subsection, the Comptroller  
20 may exempt a person from posting security for the tobacco **AND ELECTRONIC SMOKING**  
21 **DEVICE** tax if the person is and has been for the past 5 years:

22 (i) licensed as required under § 16–202 of the Business Regulation  
23 Article to act as a wholesaler or § 16.5–201 to act as an other tobacco products wholesaler;  
24 and

25 (ii) 1. in continuous compliance with the tobacco **AND**  
26 **ELECTRONIC SMOKING DEVICE** tax laws, as determined under paragraph (3) of this  
27 subsection; and

28 2. in continuous compliance with the conditions of the  
29 person's security posted under this subsection.

1 (3) For purposes of paragraph (2) of this subsection, a person is in  
2 continuous compliance with the tobacco **AND ELECTRONIC SMOKING DEVICE** tax laws for  
3 a period if the person has not, at any time during that period:

4 (i) failed to pay any tobacco **AND ELECTRONIC SMOKING DEVICE**  
5 tax or any tobacco **AND ELECTRONIC SMOKING DEVICE** tax assessment when due;

6 (ii) failed to file a tobacco **AND ELECTRONIC SMOKING DEVICE** tax  
7 return when due; or

8 (iii) otherwise violated any of the provisions of Title 12 or Title 13 of  
9 this article or Title 16 or Title 16.5 of the Business Regulation Article.

10 (4) (i) An exemption granted under paragraph (2) of this subsection is  
11 effective only to the extent that a person's potential tobacco **AND ELECTRONIC SMOKING**  
12 **DEVICE** tax liability does not exceed an amount determined by the Comptroller based on  
13 the person's experience during the 5-year compliance period under paragraph (2) of this  
14 subsection.

15 (ii) The Comptroller may revoke an exemption granted to a person  
16 under paragraph (2) of this subsection if the person at any time fails to be in continuous  
17 compliance with the tobacco **AND ELECTRONIC SMOKING DEVICE** tax laws, as described  
18 in paragraph (3) of this subsection.

19 (iii) The Comptroller may reinstate an exemption revoked under  
20 subparagraph (ii) of this paragraph if the person meets the requirements of paragraph (2)(i)  
21 and (ii) of this subsection for a period of 2 years following the revocation.

22 (5) The Comptroller may not exempt a person from posting a bond or other  
23 security for the tobacco **AND ELECTRONIC SMOKING DEVICE** tax unless the Comptroller  
24 determines that the person is solvent and financially able to pay the person's potential  
25 tobacco **AND ELECTRONIC SMOKING DEVICE** tax liability.

26 (6) If a corporation is granted an exemption from posting a bond or other  
27 security for the tobacco **AND ELECTRONIC SMOKING DEVICE** tax, any officer of the  
28 corporation who exercises direct control over its fiscal management is personally liable for  
29 any tobacco **AND ELECTRONIC SMOKING DEVICE** tax, interest and penalties owed by the  
30 corporation.

31 13-826.

32 The following securities are acceptable:

33 (1) a bond issued by a surety company that is authorized to do business in  
34 the State and is approved by the State Insurance Commissioner as to solvency and  
35 responsibility;

- 1 (2) cash in an amount that the tax collector approves;
- 2 (3) marketable securities that the tax collector approves; or
- 3 (4) for admissions and amusement tax, alcoholic beverage tax, boxing and  
4 wrestling tax, and tobacco **AND ELECTRONIC SMOKING DEVICE** tax, an irrevocable letter  
5 of credit:
- 6 (i) in an amount that the Comptroller approves; and
- 7 (ii) with a date certain for coverage during the collection period.

8 13-834.

- 9 (a) In this Part VI of this subtitle the following words have the meanings  
10 indicated.
- 11 (c) “Contraband tobacco products” means cigarettes or other tobacco products, as  
12 defined in § 12-101 of this article:

- 13 (1) on which tobacco **AND ELECTRONIC SMOKING DEVICE** tax is not paid;  
14 and
- 15 (2) that are delivered, possessed, sold, or transported in the State in a  
16 manner not authorized under Title 12 of this article or Title 16 of the Business Regulation  
17 Article.

18 13-901.

- 19 (h) A claim for refund of tobacco **AND ELECTRONIC SMOKING DEVICE** tax may  
20 be filed by a claimant who buys tobacco **AND ELECTRONIC SMOKING DEVICE** tax stamps  
21 that:
- 22 (1) are affixed erroneously to anything other than a package of cigarettes;
- 23 (2) are affixed to a package of unsalable cigarettes;
- 24 (3) are canceled by the Comptroller;
- 25 (4) if the claim is \$250 or more, are lost or destroyed in the State due to  
26 fire, flood, or other disaster, vandalism, or malicious mischief, except loss due to theft; or
- 27 (5) mutilated or damaged, whether or not affixed to a package of cigarettes.

28 13-1012.



1 (a) A person who willfully makes, causes to be made, or procures an altered or  
2 counterfeited tobacco **AND ELECTRONIC SMOKING DEVICE** tax stamp in violation of §  
3 12–305 of this article is guilty of a misdemeanor and, on conviction, is subject to a fine not  
4 exceeding \$5,000 or imprisonment not exceeding 5 years or both.

5 (b) (1) A person who willfully uses, transfers, or possesses an altered or  
6 counterfeited tobacco **AND ELECTRONIC SMOKING DEVICE** tax stamp in violation of §  
7 12–305 of this article is guilty of a misdemeanor and, on conviction, is subject to a fine not  
8 exceeding \$5,000 or imprisonment not exceeding 5 years or both.

9 (2) A person who uses a tobacco **AND ELECTRONIC SMOKING DEVICE** tax  
10 stamp more than once in violation of § 12–304 of this article is guilty of a misdemeanor and,  
11 on conviction, is subject to a fine not exceeding \$5,000 or imprisonment not exceeding 5  
12 years or both.

13 (c) A person who buys a tobacco **AND ELECTRONIC SMOKING DEVICE** tax stamp  
14 from a person other than the Comptroller without an authorization from the Comptroller  
15 in violation of § 12–303 of this article is guilty of a misdemeanor and, on conviction, is  
16 subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both.

17 (d) Each day that any violation under this section continues constitutes a  
18 separate offense.

19 13–1014.

20 (b) A person who willfully possesses, sells, or attempts to sell other tobacco  
21 products on which the tobacco **AND ELECTRONIC SMOKING DEVICE** tax has not been paid  
22 in the State in violation of Title 12 of this article is guilty of a misdemeanor and on  
23 conviction is subject to a fine not exceeding \$500 or imprisonment not exceeding 3 months  
24 or both.

25 13–1015.

26 (a) A person who willfully ships, imports, sells into or within, or transports  
27 within, this State cigarettes or other tobacco products on which the tobacco **AND**  
28 **ELECTRONIC SMOKING DEVICE** tax has not been paid in violation of Title 12 of this article  
29 or § 16–219, § 16–222, § 16.5–215, or § 16.5–216 of the Business Regulation Article is guilty  
30 of a felony and, on conviction, is subject to the penalties set forth in subsections (b) and (c)  
31 of this section.

32 13–1104.

33 (h) Except for a claim under § 13–901(a)(1) or (2) of this title, a claim for refund  
34 of tobacco **AND ELECTRONIC SMOKING DEVICE** tax may not be filed after 1 year from the  
35 date of the event that caused the refund.

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   October 1, 2016.