

# SENATE BILL 114

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(PRE-FILED)

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By: **Chair, Finance Committee (By Request – Departmental – Health and Mental Hygiene)**

Requested: October 6, 2015

Introduced and read first time: January 13, 2016

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Health – Prohibition on Distribution of Tobacco Products and Electronic**  
3 **Smoking Devices to Minors – Civil Enforcement**

4 FOR the purpose of reorganizing and expanding the scope of certain provisions of law that  
5 establish certain civil enforcement procedures and penalties for the sale, offer for  
6 sale, or distribution to minors of electronic smoking devices and related products;  
7 prohibiting a person from distributing to a minor a tobacco product, an electronic  
8 smoking device, cigarette rolling papers, or a coupon redeemable for a tobacco  
9 product, with certain exceptions; authorizing a county health officer or certain  
10 designees of a county health officer to issue a citation for a violation of this Act;  
11 establishing certain civil penalties for a violation of this Act; establishing a certain  
12 affirmative defense; making conforming changes; defining certain terms; providing  
13 for the construction and application of this Act; and generally relating to prohibitions  
14 on the distribution of tobacco products and electronic smoking devices to minors.

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

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

22 **Article – Health – General**

23 24–305.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           [(a) This section does not apply to a tobacco product that is regulated under Title  
2 16 of the Business Regulation Article.

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

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

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

14           **(2) “DESIGNEE” MEANS A SWORN LAW ENFORCEMENT OFFICER, A**  
15 **RETIRED SWORN LAW ENFORCEMENT OFFICER EMPLOYED BY A COUNTY HEALTH**  
16 **OFFICER, OR AN EMPLOYEE OF A LOCAL HEALTH DEPARTMENT TRAINED IN CIVIL**  
17 **ENFORCEMENT.**

18           **(3) “DISTRIBUTE” MEANS TO:**

19                   **(I) GIVE, SELL, DELIVER, DISPENSE, OR ISSUE;**

20                   **(II) OFFER TO GIVE, SELL, DELIVER, DISPENSE, OR ISSUE; OR**

21                   **(III) CAUSE OR HIRE ANY PERSON TO GIVE, SELL, DELIVER,**  
22 **DISPENSE, OR ISSUE OR OFFER TO GIVE, SELL, DELIVER, DISPENSE, OR ISSUE.**

23           **(4) (I) “ELECTRONIC SMOKING DEVICE” MEANS AN ELECTRONIC**  
24 **DEVICE, A COMPONENT FOR AN ELECTRONIC DEVICE, OR A PRODUCT USED TO**  
25 **REFILL OR RESUPPLY AN ELECTRONIC DEVICE THAT CAN BE USED TO DELIVER**  
26 **NICOTINE TO THE INDIVIDUAL INHALING FROM THE DEVICE.**

27                   **(II) “ELECTRONIC SMOKING DEVICE” INCLUDES ELECTRONIC**  
28 **CIGARETTES, CIGARS, CIGARILLOS, HOOKAHS, AND PIPES.**

29                   **(III) “ELECTRONIC SMOKING DEVICE” DOES NOT INCLUDE ANY**  
30 **NICOTINE DEVICE THAT CONTAINS OR DELIVERS NICOTINE INTENDED FOR HUMAN**  
31 **CONSUMPTION IF THE DEVICE HAS BEEN APPROVED BY THE UNITED STATES FOOD**  
32 **AND DRUG ADMINISTRATION FOR SALE AS A TOBACCO CESSATION PRODUCT AND IS**  
33 **BEING MARKETED AND SOLD SOLELY FOR THIS PURPOSE.**

1           **(5) “TOBACCO PRODUCT” MEANS ANY SUBSTANCE CONTAINING**  
2 **TOBACCO, INCLUDING CIGARETTES, CIGARS, CIGARILLOS, SMOKING TOBACCO,**  
3 **SNUFF, AND SMOKELESS TOBACCO.**

4           **(B) (1) PARAGRAPH (2) OF THIS SUBSECTION DOES NOT APPLY TO THE**  
5 **DISTRIBUTION OF A COUPON THAT IS REDEEMABLE FOR A TOBACCO PRODUCT IF**  
6 **THE COUPON IS:**

7                   **(I) 1. CONTAINED IN A NEWSPAPER, MAGAZINE, OR OTHER**  
8 **TYPE OF PUBLICATION; AND**

9                               **2. INCIDENTAL TO THE PRIMARY PURPOSE OF THE**  
10 **PUBLICATION; OR**

11                   **(II) SENT THROUGH THE MAIL.**

12           **(2) A PERSON MAY NOT:**

13                   **(I) DISTRIBUTE A TOBACCO PRODUCT OR AN ELECTRONIC**  
14 **SMOKING DEVICE TO A MINOR UNLESS THE MINOR IS ACTING SOLELY AS THE AGENT**  
15 **OF THE MINOR’S EMPLOYER WHO IS ENGAGED IN THE BUSINESS OF DISTRIBUTING**  
16 **TOBACCO PRODUCTS;**

17                   **(II) DISTRIBUTE CIGARETTE ROLLING PAPERS TO A MINOR; OR**

18                   **(III) DISTRIBUTE TO A MINOR A COUPON REDEEMABLE FOR A**  
19 **TOBACCO PRODUCT.**

20           **(c) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
21 **SUBSECTION, A person that violates this section is subject to a civil penalty of:**

22                   **[(1)] (I) Except as provided in item [(2)] (II) of this subsection, \$300; and**

23                               **[(2)] (II) \$500 for any violation occurring within 24 months after a**  
24 **previous violation.**

25           **(2) IF A LICENSED RETAILER OR THE RETAILER’S EMPLOYEE**  
26 **VIOLATES THIS SECTION, THE LICENSED RETAILER IS SUBJECT TO A CIVIL PENALTY**  
27 **OF NOT LESS THAN \$500 BUT NOT MORE THAN \$1,000.**

28           **[(d) In a prosecution for a violation of this section, it is a defense that the defendant**  
29 **examined the purchaser’s or recipient’s driver’s license or other valid identification issued**

1 by an employer, government unit, or institution of higher education that positively  
2 identified the purchaser or recipient as at least 18 years of age.

3 (e) (1) In this subsection, “designee” means a retired sworn law enforcement  
4 officer employed by a county health officer or an employee of a local health department  
5 trained in civil enforcement.

6 (2) A sworn law enforcement officer, a]

7 (D) (1) A county health officer[,] or a designee of a county health officer may  
8 issue a civil citation for a violation of this section.

9 [(3)] (2) A citation issued under this section shall include:

- 10 (i) The name and address of the person charged;
- 11 (ii) The nature of the violation;
- 12 (iii) The location and time of the violation;
- 13 (iv) The amount of the civil penalty;
- 14 (v) The manner, location, and time in which the civil penalty may be  
15 paid;
- 16 (vi) A notice stating the person’s right to elect to stand trial for the  
17 violation; and
- 18 (vii) A warning that failure to pay the civil penalty or to contest  
19 liability in a timely manner in accordance with the citation:
- 20 1. Is an admission of liability; and
- 21 2. May result in entry of a default judgment that may include  
22 the civil penalty, court costs, and administrative expenses.

23 [(4)] (3) The [sworn law enforcement officer,] county health officer[,] or  
24 designee shall retain a copy of the citation issued under this section.

25 [(5)] (4) (i) [1.] A person who receives a citation from a county  
26 health officer or designee under this section may elect to stand trial for the violation by  
27 filing a notice of intention to stand trial with the county health officer or designee at least  
28 5 days before the date set in the citation for the payment of the civil penalty.

1                   [2.] (II)       After receiving a notice of intention to stand trial  
2 under [subsubparagraph 1 of this subparagraph] THIS SECTION, the county health officer  
3 or designee shall forward the notice and a copy of the citation to the District Court.

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

8                   [(6)] (5)       (i)       After receiving a citation and notice under this section, the  
9 District Court shall schedule the case for trial and notify the defendant of the trial date.

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

13                   [(7)] (6)       The District Court shall remit any penalties collected for a  
14 violation of this section to the county in which the violation occurred.

15                   [(8)] (7)       Adjudication of a violation of this section is not a criminal  
16 conviction for any purpose.

17                   (E)       IN A PROSECUTION FOR A VIOLATION OF THIS SECTION, IT IS AN  
18 AFFIRMATIVE DEFENSE THAT THE DEFENDANT EXAMINED THE PURCHASER’S OR  
19 RECIPIENT’S DRIVER’S LICENSE OR OTHER VALID PHOTO IDENTIFICATION ISSUED  
20 BY AN EMPLOYER, A GOVERNMENTAL UNIT, OR AN INSTITUTION OF HIGHER  
21 EDUCATION THAT POSITIVELY IDENTIFIED THE PURCHASER OR RECIPIENT AS AT  
22 LEAST 18 YEARS OF AGE.

23                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be construed  
24 to preempt or prevail over any county or municipal ordinance, resolution, law, or rule more  
25 stringent than this Act.

26                   SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to  
27 apply only prospectively and may not be applied or interpreted to have any effect on or  
28 application to any cause of action arising before the effective date of this Act.

29                   SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
30 1, 2016.