

HOUSE BILL 1094

J1, E1

8lr3417

By: **Delegates Rosenberg and Waldstreicher**

Introduced and read first time: February 7, 2018

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 13, 2018

CHAPTER _____

1 AN ACT concerning

2 **Distribution of Electronic Cigarettes to Minors – Prohibition and Penalties**

3 FOR the purpose of prohibiting under criminal law a person that distributes tobacco
4 products for commercial purposes from distributing to a minor an electronic nicotine
5 delivery system; prohibiting under criminal law certain persons from purchasing for
6 or selling an electronic nicotine delivery system to a minor; establishing a certain
7 criminal penalty for distributing certain electronic nicotine delivery systems to a
8 minor; prohibiting under criminal law certain minors from using, possessing,
9 obtaining, or attempting to obtain an electronic nicotine delivery system; providing
10 that a conviction for a violation of certain provisions of law precludes a proceeding
11 for a certain civil penalty arising out of the same violation; altering certain civil
12 penalties associated with distributing certain electronic nicotine delivery systems to
13 a minor; providing that enforcement of a certain civil penalty precludes a prosecution
14 for a violation of certain provisions of law arising out of the same violation;
15 authorizing certain law enforcement officers to issue a civil citation to a person who
16 distributes certain tobacco products to a minor; correcting a cross-reference; making
17 certain technical corrections; and generally relating to the distribution of electronic
18 cigarettes to minors.

19 BY repealing and reenacting, without amendments,
20 Article – Business Regulation
21 Section 16.7–101(a) and (c)
22 Annotated Code of Maryland
23 (2015 Replacement Volume and 2017 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,
2 Article – Criminal Law
3 Section 10–107 and 10–108
4 Annotated Code of Maryland
5 (2012 Replacement Volume and 2017 Supplement)

6 BY repealing and reenacting, without amendments,
7 Article – Health – General
8 Section 24–305(a) and (b) and 24–307(b) and (e)(1)
9 Annotated Code of Maryland
10 (2015 Replacement Volume and 2017 Supplement)

11 BY repealing and reenacting, with amendments,
12 Article – Health – General
13 Section 24–305(c) and 24–307(c) and (e)(2)
14 Annotated Code of Maryland
15 (2015 Replacement Volume and 2017 Supplement)

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

18 Article – Business Regulation

19 16.7–101.

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

21 (c) (1) “Electronic nicotine delivery system” means an electronic device, a
22 component for an electronic device, or a product used to refill or resupply an electronic
23 device that can be used to deliver nicotine to an individual inhaling from the device.

24 (2) “Electronic nicotine delivery system” includes an electronic cigarette,
25 an electronic cigar, an electronic cigarillo, an electronic pipe, and vaping liquid.

26 (3) “Electronic nicotine delivery system” does not include:

27 (i) a nicotine device that contains or delivers nicotine intended for
28 human consumption if the device has been approved by the United States Food and Drug
29 Administration for sale as a tobacco cessation product and is being marketed and sold solely
30 for that purpose;

31 (ii) cannabis oil or any other unlawful substance; or

32 (iii) an electronic device that is being used to deliver cannabis oil or
33 another unlawful substance.

34 Article – Criminal Law

1 10–107.

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

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

6 (2) sent through the mail.

7 (b) (1) This subsection does not apply to the distribution of a tobacco product
8 [or], tobacco paraphernalia, **OR AN ELECTRONIC NICOTINE DELIVERY SYSTEM** to a
9 minor who is acting solely as the agent of the minor's employer if the employer distributes
10 tobacco products [or], tobacco paraphernalia, **OR ELECTRONIC NICOTINE DELIVERY**
11 **SYSTEMS** for commercial purposes.

12 (2) A person who distributes tobacco products for commercial purposes,
13 including a person licensed under Title 16 of the Business Regulation Article, may not
14 distribute to a minor:

15 (i) a tobacco product;

16 (ii) tobacco paraphernalia; [or]

17 (iii) a coupon redeemable for a tobacco product; **OR**

18 **(IV) AN ELECTRONIC NICOTINE DELIVERY SYSTEM, AS DEFINED**
19 **IN § 16.7–101 OF THE BUSINESS REGULATION ARTICLE.**

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

21 (1) purchase for or sell a tobacco product **OR AN ELECTRONIC NICOTINE**
22 **DELIVERY SYSTEM** to a minor; or

23 (2) distribute tobacco paraphernalia to a minor.

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

28 (e) (1) A person who violates this section is guilty of a misdemeanor and on
29 conviction is subject to a fine not exceeding:

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

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

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

5 (2) ~~Enforcement of a civil penalty for a violation of this section~~ **ISSUANCE**
6 **OF A CIVIL CITATION FOR THE SALE OF A TOBACCO PRODUCT OR AN ELECTRONIC**
7 **NICOTINE DELIVERY SYSTEM TO A MINOR** precludes a prosecution for a violation of ~~this~~
8 ~~section] § 24-305 OR § 24-307 OF THE HEALTH GENERAL ARTICLE~~ arising out of the
9 same violation.

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

12 10-108.

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

15 (b) This section does not apply to the possession of a tobacco product [or],
16 cigarette rolling paper, **OR AN ELECTRONIC NICOTINE DELIVERY SYSTEM** by a minor
17 who is acting as the agent of the minor’s employer within the scope of employment.

18 (c) A minor may not:

19 (1) use or possess a tobacco product [or], cigarette rolling paper, **OR AN**
20 **ELECTRONIC NICOTINE DELIVERY SYSTEM**; or

21 (2) obtain or attempt to obtain a tobacco product [or], cigarette rolling
22 paper, **OR AN ELECTRONIC NICOTINE DELIVERY SYSTEM** by using a form of
23 identification that:

24 (i) is falsified; or

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

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

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

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

Article – Health – General

1

2 24–305.

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

5 (b) (1) Except as provided in paragraph (2) of this subsection, a person may
6 not sell, distribute, or offer for sale to a minor an electronic nicotine delivery system, as
7 defined in § 16.7–101(c) of the Business Regulation Article.

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

12 (c) (1) A person that violates this section is subject to a civil penalty [of] NOT
13 EXCEEDING:

14 [(1)] (I) [Except as provided in item (2) of this subsection,] \$300 FOR A
15 FIRST VIOLATION; [and]

16 [(2)] (II) [\$500] \$1,000 for [any] A SECOND violation occurring within 24
17 months after [a previous] THE FIRST violation; AND

18 (III) \$3,000 FOR EACH SUBSEQUENT VIOLATION OCCURRING
19 WITHIN 24 MONTHS AFTER THE PRECEDING VIOLATION.

20 (2) ~~A CONVICTION~~ ISSUANCE OF A CIVIL CITATION FOR A VIOLATION
21 OF THIS SECTION PRECLUDES A PROCEEDING FOR A CIVIL PENALTY PROSECUTION
22 UNDER § 10–107 OF THE CRIMINAL LAW ARTICLE ARISING OUT OF THE SAME
23 VIOLATION.

24 24–307.

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

28 (1) A tobacco product;

29 (2) Tobacco paraphernalia; or

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

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

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

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

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

8 (2) The local health departments shall report violations of subsection (b) of
9 this section to the Comptroller’s Office.

10 (3) [A conviction] ISSUANCE OF A CIVIL CITATION for a violation of this
11 section precludes [a proceeding for a civil penalty] PROSECUTION under [§ 24–307 of the
12 Health – General] § 10–107 OF THE CRIMINAL LAW Article arising out of the same
13 violation.

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

17 (2) A SWORN LAW ENFORCEMENT OFFICER, A county health officer, or a
18 designee of a county health officer may issue a civil citation for a violation of subsection (b)
19 of this section.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2018.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.