

SENATE BILL 708

C2, E1, J1

9lr2364
CF 9lr2362

By: **Senators Beidle, Feldman, Klausmeier, and Reilly**

Introduced and read first time: February 4, 2019

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Electronic Nicotine Delivery Systems – Prohibitions and Requirements**

3 FOR the purpose of requiring the Secretary of Health to adopt certain regulations to set
4 standards for labeling and child resistant packaging for electronic nicotine delivery
5 systems and vaping liquid; requiring an electronic nicotine delivery systems
6 manufacturer to ensure that electronic nicotine delivery systems and vaping liquid
7 are packaged in accordance with the standards adopted by the Secretary and in
8 tamper-evident packaging; providing that prosecution for a certain law precludes a
9 certain civil citation arising out of the same violation; prohibiting a certain licensed
10 person from taking any action directly or indirectly to target minors in the
11 advertising or marketing of electronic nicotine delivery systems or vaping liquid;
12 providing that using certain images in advertising, promoting, packaging, or labeling
13 constitutes a violation against the prohibition on advertising or marketing to minors;
14 requiring electronic nicotine delivery systems retailers and vape shop vendors to
15 display a certain sign on their premises; providing for the content and placement of
16 the sign; requiring electronic nicotine delivery systems retailers and vape shop
17 vendors to place electronic nicotine delivery systems and vaping liquid in a certain
18 display; requiring electronic nicotine delivery systems retailers and vape shop
19 vendors to make a good faith effort to verify that a certain consumer is not a minor;
20 requiring electronic nicotine delivery systems retailers or vape shop vendors to
21 accept full payment through certain methods before shipping certain deliveries;
22 prohibiting certain electronic nicotine delivery systems retailers and vape shop
23 vendors from shipping electronic nicotine delivery systems or vaping liquid to anyone
24 other than a certain purchaser; authorizing electronic nicotine delivery systems
25 retailers and vape shop vendors to request the e-mail address of a certain purchaser;
26 requiring certain licensed persons and certain persons to verify that certain
27 individuals are of legal age by examining a certain identification or, for sales or
28 distributions of electronic nicotine delivery systems made in a certain manner, by
29 attempting to verify the age of certain individuals by using a certain third-party age
30 verification service; increasing the penalties for certain violations of law pertaining
31 to the distribution of tobacco products to minors; providing that examining a certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 identification of a purchaser or recipient in a certain manner is a defense against a
2 certain prosecution; providing that it is a defense to a certain prosecution for a
3 certain criminal violation and a certain civil violation if the appearance of a
4 purchaser or recipient was such that a reasonable person would believe the
5 purchaser or recipient was at least a certain age; increasing the penalty amount for
6 certain civil penalties; defining certain terms; and generally relating to the
7 packaging, marketing, and sale of electronic nicotine delivery systems.

8 BY repealing and reenacting, without amendments,
9 Article – Business Regulation
10 Section 16.7–101(a), (c), and (k)
11 Annotated Code of Maryland
12 (2015 Replacement Volume and 2018 Supplement)

13 BY adding to
14 Article – Business Regulation
15 Section 16.7–301 through 16.7–303 to be under the new subtitle “Subtitle 3. General
16 Prohibited Acts”
17 Annotated Code of Maryland
18 (2015 Replacement Volume and 2018 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Criminal Law
21 Section 10–107
22 Annotated Code of Maryland
23 (2012 Replacement Volume and 2018 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article – Health – General
26 Section 22–301 to be under the amended subtitle “Subtitle 3. Child Resistant
27 Packaging of Dangerous Household Substances and Electronic Nicotine
28 Delivery Systems”; and 24–305(b), (c), and (d)
29 Annotated Code of Maryland
30 (2015 Replacement Volume and 2018 Supplement)

31 BY adding to
32 Article – Health – General
33 Section 22–304.1
34 Annotated Code of Maryland
35 (2015 Replacement Volume and 2018 Supplement)

36 BY repealing and reenacting, without amendments,
37 Article – Health – General
38 Section 24–305(a)
39 Annotated Code of Maryland
40 (2015 Replacement Volume and 2018 Supplement)

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

3 **Article – Business Regulation**

4 16.7–101.

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

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

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

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

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

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

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

19 (k) “Vaping liquid” means a liquid that:

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

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

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

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

26 **SUBTITLE 3. GENERAL PROHIBITED ACTS.**

27 **16.7–301.**

1 **(A) AN ELECTRONIC NICOTINE DELIVERY SYSTEMS MANUFACTURER SHALL**
2 **ENSURE THAT ELECTRONIC NICOTINE DELIVERY SYSTEMS AND VAPING LIQUID ARE**
3 **PACKAGED:**

4 **(1) WITH THE LABELING AND CHILD RESISTANT PACKAGING**
5 **STANDARDS ADOPTED BY THE SECRETARY OF HEALTH UNDER § 22-304.1 OF THE**
6 **HEALTH – GENERAL ARTICLE; AND**

7 **(2) IN TAMPER-EVIDENT PACKAGING.**

8 **(B) PROSECUTION FOR AN IMPROPERLY PACKAGED ELECTRONIC NICOTINE**
9 **DELIVERY SYSTEM UNDER THIS SECTION PRECLUDES THE ISSUANCE OF A CIVIL**
10 **CITATION FOR A VIOLATION OF TITLE 22, SUBTITLE 3 OF THE HEALTH – GENERAL**
11 **ARTICLE ARISING OUT OF THE SAME INCIDENT.**

12 **16.7-302.**

13 **(A) A PERSON LICENSED UNDER THIS TITLE MAY NOT TAKE ANY ACTION**
14 **DIRECTLY OR INDIRECTLY TO TARGET MINORS IN THE ADVERTISING OR MARKETING**
15 **OF ELECTRONIC NICOTINE DELIVERY SYSTEMS OR VAPING LIQUID.**

16 **(B) BY USING ANY OF THE FOLLOWING IN THE ADVERTISING, PROMOTING,**
17 **PACKAGING, OR LABELING OF AN ELECTRONIC NICOTINE DELIVERY SYSTEM, A**
18 **PERSON LICENSED UNDER THIS TITLE IS IN VIOLATION OF SUBSECTION (A) OF THIS**
19 **SECTION:**

20 **(1) A CARTOON;**

21 **(2) A TRADEMARK THAT IMITATES OR MIMICS THE TRADEMARK OF A**
22 **PRODUCT THAT HAS BEEN ADVERTISED OR MARKETED PRIMARILY TO MINORS;**

23 **(3) A SYMBOL OR CELEBRITY THAT IS PRIMARILY ASSOCIATED WITH**
24 **MINORS OR MEDIA PRIMARILY DIRECTED TO MINORS; AND**

25 **(4) AN IMAGE OF AN INDIVIDUAL WHO APPEARS TO BE UNDER THE**
26 **AGE OF 27 YEARS.**

27 **16.7-303.**

28 **(A) ELECTRONIC NICOTINE DELIVERY SYSTEMS RETAILERS AND VAPE**
29 **SHOP VENDORS SHALL DISPLAY A SIGN WITH AT LEAST ONE OF THE FOLLOWING**
30 **MESSAGES ON THEIR PREMISES:**

1 (1) “UNACCOMPANIED MINORS ARE NOT ALLOWED ON THE
2 PREMISES”;

3 (2) “PRODUCTS ARE NOT FOR SALE TO MINORS”; OR

4 (3) “UNDERAGE SALES PROHIBITED”.

5 (B) A SIGN REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL:

6 (1) BE AT LEAST 3 INCHES BY 5 INCHES IN SIZE;

7 (2) CONTAIN THE TEXT REQUIRED IN ENGLISH, SPANISH, AND ANY
8 OTHER LANGUAGES REQUIRED BY THE FEDERAL VOTING RIGHTS ACT; AND

9 (3) BE PLACED PROMINENTLY.

10 (C) AN ELECTRONIC NICOTINE DELIVERY SYSTEMS RETAILER OR VAPE
11 SHOP VENDOR SHALL PLACE ALL ELECTRONIC NICOTINE DELIVERY SYSTEMS AND
12 VAPING LIQUID IN A DISPLAY THAT IS NOT PHYSICALLY ACCESSIBLE TO CUSTOMERS
13 WITHOUT THE ASSISTANCE OF AN EMPLOYEE.

14 (D) (1) AN ELECTRONIC NICOTINE DELIVERY SYSTEMS RETAILER OR
15 VAPE SHOP VENDOR WHO SELLS ELECTRONIC NICOTINE DELIVERY SYSTEMS OR
16 VAPING LIQUID THROUGH ITS WEBSITE SHALL MAKE A GOOD FAITH EFFORT TO
17 VERIFY THAT A CONSUMER IT SELLS TO IS NOT A MINOR.

18 (2) BEFORE AN ELECTRONIC NICOTINE DELIVERY SYSTEM OR
19 VAPING LIQUID IS SHIPPED FOR DELIVERY, AN ELECTRONIC NICOTINE DELIVERY
20 SYSTEMS RETAILER OR VAPE SHOP VENDOR SHALL ACCEPT FULL PAYMENT FROM
21 THE PURCHASER THROUGH:

22 (I) A CHECK DRAWN ON AN ACCOUNT IN THE PURCHASER’S
23 NAME;

24 (II) A CREDIT CARD ISSUED IN THE PURCHASER’S NAME; OR

25 (III) A DEBIT CARD ISSUED IN THE PURCHASER’S NAME.

26 (3) AN ELECTRONIC NICOTINE DELIVERY SYSTEMS RETAILER OR
27 VAPE SHOP VENDOR MAY NOT SHIP AN ELECTRONIC NICOTINE DELIVERY SYSTEM
28 OR VAPING LIQUID TO ANYONE OTHER THAN A PURCHASER PAYING AS REQUIRED BY
29 PARAGRAPH (2) OF THIS SUBSECTION WHEN OPERATING WITHIN THE SCOPE OF THE

1 **ELECTRONIC NICOTINE DELIVERY SYSTEMS RETAILER LICENSE OR VAPE SHOP**
 2 **VENDOR LICENSE.**

3 **(4) AN ELECTRONIC NICOTINE DELIVERY SYSTEMS RETAILER OR**
 4 **VAPE SHOP VENDOR MAY REQUEST THE E-MAIL ADDRESS OF A PURCHASER USING**
 5 **ITS WEBSITE.**

6 **Article – Criminal Law**

7 10–107.

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

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

12 (2) sent through the mail.

13 (b) (1) This subsection does not apply to the distribution of a tobacco product,
 14 tobacco paraphernalia, or an electronic nicotine delivery system to a minor who is acting
 15 solely as the agent of the minor's employer if the employer distributes tobacco products,
 16 tobacco paraphernalia, or electronic nicotine delivery systems for commercial purposes.

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

20 (i) a tobacco product;

21 (ii) tobacco paraphernalia;

22 (iii) a coupon redeemable for a tobacco product; or

23 (iv) an electronic nicotine delivery system, as defined in § 16.7–101
 24 of the Business Regulation Article.

25 **(3) TO COMPLY WITH THE REQUIREMENTS OF PARAGRAPH (2) OF**
 26 **THIS SUBSECTION, A PERSON LICENSED UNDER TITLE 16.7 OF THE BUSINESS**
 27 **REGULATION ARTICLE SHALL, BEFORE PROVIDING AN INDIVIDUAL WITH AN**
 28 **ELECTRONIC NICOTINE DELIVERY SYSTEM:**

29 **(I) VERIFY THE AGE OF AN INDIVIDUAL WHO APPEARS TO BE**
 30 **UNDER THE AGE OF 27 YEARS BY EXAMINING THE INDIVIDUAL'S DRIVER'S LICENSE**
 31 **OR OTHER VALID IDENTIFICATION ISSUED BY AN EMPLOYER, A GOVERNMENTAL**
 32 **UNIT, OR AN INSTITUTION OF HIGHER EDUCATION; OR**

1 **(II) IN THE CASE OF A DISTRIBUTION MADE THROUGH A**
2 **COMPUTER NETWORK, A TELEPHONIC NETWORK, OR ANOTHER ELECTRONIC**
3 **NETWORK, ATTEMPT TO VERIFY THE AGE OF THE INDIVIDUAL BY USING A**
4 **THIRD-PARTY AGE VERIFICATION SERVICE THAT USES INFORMATION AVAILABLE**
5 **FROM PUBLIC RECORDS TO ESTABLISH AN INDIVIDUAL'S AGE.**

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

7 (1) purchase for or sell a tobacco product or an electronic nicotine delivery
8 system to a minor; or

9 (2) distribute tobacco 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) (1) A person who violates this section is guilty of a misdemeanor and on
15 conviction is subject to a fine not exceeding:

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

17 (ii) ~~[\$1,000]~~ **\$2,500** for a second violation occurring within 2 years
18 after the first violation; and

19 (iii) ~~[\$3,000]~~ **\$5,000** for each subsequent violation occurring within
20 2 years after the preceding violation.

21 (2) Issuance of a civil citation for the sale of a tobacco product or an
22 electronic nicotine delivery system to a minor precludes a prosecution for a violation of §
23 24–307 of the Health – General Article arising out of the same violation.

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

26 **(G) IN A PROSECUTION FOR A VIOLATION OF THIS SECTION, IT IS A DEFENSE**
27 **THAT:**

28 **(1) THE DEFENDANT EXAMINED THE PURCHASER'S OR RECIPIENT'S**
29 **DRIVER'S LICENSE OR OTHER VALID IDENTIFICATION ISSUED BY AN EMPLOYER, A**
30 **GOVERNMENTAL UNIT, OR AN INSTITUTION OF HIGHER EDUCATION THAT**
31 **POSITIVELY IDENTIFIED THE PURCHASER OR RECIPIENT AS AT LEAST 18 YEARS**
32 **OLD; OR**

1 **(2) THE PURCHASER’S OR RECIPIENT’S APPEARANCE WAS SUCH THAT**
2 **A REASONABLE PERSON WOULD BELIEVE THE PURCHASER OR RECIPIENT WAS AT**
3 **LEAST 27 YEARS OLD.**

4 **Article – Health – General**

5 **Subtitle 3. Child Resistant Packaging of Dangerous Household Substances AND**
6 **ELECTRONIC NICOTINE DELIVERY SYSTEMS.**

7 22–301.

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

9 (b) “Child resistant packaging” means packaging that is designed so that the
10 average child under the age of 5 years finds it significantly difficult to open the package or
11 to obtain a harmful amount of the contents of the package within a reasonable time, and so
12 that it is not difficult for a normal adult to open or use.

13 **(C) “ELECTRONIC NICOTINE DELIVERY SYSTEM” HAS THE MEANING**
14 **STATED IN § 16.7–101 OF THE BUSINESS REGULATION ARTICLE.**

15 **[(c)] (D)** “Household substance” means any substance that is customarily used
16 or stored by individuals in or about the household and that is:

17 (1) A hazardous substance as defined in the Federal Hazardous Substances
18 Act;

19 (2) A pesticide as defined in the Federal Insecticide, Fungicide, and
20 Rodenticide Act;

21 (3) A food, drug, or cosmetic as defined in the Federal Food, Drug, and
22 Cosmetic Act; or

23 (4) A fuel that is:

24 (i) Intended for use in the heating, cooking, or refrigeration system
25 of a house; and

26 (ii) Stored in a portable container.

27 **[(d)] (E)** “Labeling” means any label or other written or graphic matter that is
28 on or accompanies a household substance or its package.

29 **[(e)] (F)** (1) “Package” means the immediate container or wrapping of a
30 household substance or the outer container or wrapping used in displaying a household
31 substance to retail consumers.

1 (2) “Package” does not include any container or wrapping that is used only
2 for:

3 (i) Transportation of a household substance in bulk or quantity to a
4 manufacturer, packer, processor, or wholesale or retail distributor; or

5 (ii) Shipment or delivery of a household substance to a retail
6 consumer, unless the container or wrapping is the only package or wrapping of the
7 household substance.

8 **[(f)] (G)** “State adopted federal regulation” means any rule or regulation
9 adopted by the federal government under the federal Poison Prevention Packaging Act that
10 becomes a rule or regulation of this State by automatic adoption under § 22–303 of this
11 subtitle.

12 **(H) “VAPING LIQUID” HAS THE MEANING STATED IN § 16.7–101 OF THE**
13 **BUSINESS REGULATION ARTICLE.**

14 **22–304.1.**

15 **(A) THE SECRETARY SHALL ADOPT REGULATIONS TO SET STANDARDS FOR**
16 **LABELING AND CHILD RESISTANT PACKAGING FOR ELECTRONIC NICOTINE**
17 **DELIVERY SYSTEMS AND VAPING LIQUID.**

18 **(B) THE STANDARDS FOR CHILD RESISTANT PACKAGING SET UNDER**
19 **SUBSECTION (A) OF THIS SECTION SHALL:**

20 **(1) BE SIMILAR TO THE STANDARDS ADOPTED FOR HOUSEHOLD**
21 **SUBSTANCES UNDER § 22–303(A)(2) OF THIS SUBTITLE; AND**

22 **(2) PROTECT CHILDREN FROM USING AN ELECTRONIC NICOTINE**
23 **DELIVERY SYSTEM OR INGESTING VAPING LIQUID.**

24 **(C) THE STANDARDS FOR LABELING ADOPTED UNDER SUBSECTION (A) OF**
25 **THIS SECTION SHALL BE IN COMPLIANCE WITH THE FEDERAL WARNING**
26 **REQUIREMENTS FOR TOBACCO PRODUCTS UNDER 21 C.F.R. 1143.3.**

27 24–305.

28 (a) This section does not apply to a tobacco product that is regulated under Title
29 16 of the Business Regulation Article.

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

4 (II) **TO COMPLY WITH THE REQUIREMENTS OF SUBPARAGRAPH**
5 **(I) OF THIS PARAGRAPH, A PERSON LICENSED UNDER TITLE 16.7 OF THE BUSINESS**
6 **REGULATION ARTICLE SHALL, BEFORE PROVIDING AN INDIVIDUAL WITH AN**
7 **ELECTRONIC NICOTINE DELIVERY SYSTEM:**

8 1. **VERIFY THE AGE OF AN INDIVIDUAL WHO APPEARS TO**
9 **BE UNDER THE AGE OF 27 YEARS BY EXAMINING THE INDIVIDUAL’S DRIVER’S**
10 **LICENSE OR OTHER VALID IDENTIFICATION ISSUED BY AN EMPLOYER, A**
11 **GOVERNMENTAL UNIT, OR AN INSTITUTION OF HIGHER EDUCATION; OR**

12 2. **IN THE CASE OF A DISTRIBUTION MADE THROUGH A**
13 **COMPUTER NETWORK, A TELEPHONIC NETWORK, OR ANOTHER ELECTRONIC**
14 **NETWORK, ATTEMPT TO VERIFY THE AGE OF THE INDIVIDUAL BY USING A**
15 **THIRD–PARTY AGE VERIFICATION SERVICE THAT USES INFORMATION AVAILABLE**
16 **FROM PUBLIC RECORDS TO ESTABLISH AN INDIVIDUAL’S AGE.**

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

21 (c) (1) A person that violates this section is subject to a civil penalty not
22 exceeding:

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

24 (ii) ~~[\$1,000]~~ **\$2,500** for a second violation occurring within 24
25 months after the first violation; and

26 (iii) ~~[\$3,000]~~ **\$5,000** for each subsequent violation occurring within
27 24 months after the preceding violation.

28 (2) Issuance of a civil citation for a violation of this section precludes
29 prosecution under § 10–107 of the Criminal Law Article arising out of the same violation.

30 (d) In a prosecution for a violation of this section, it is a defense that **[the]:**

31 **(1) THE** defendant examined the purchaser’s or recipient’s driver’s license
32 or other valid identification issued by an employer, government unit, or institution of
33 higher education that positively identified the purchaser or recipient as at least 18 years
34 **[of age] OLD; OR**

1 **(2) THE PURCHASER'S OR RECIPIENT'S APPEARANCE WAS SUCH THAT**
2 **A REASONABLE PERSON WOULD BELIEVE THE PURCHASER OR RECIPIENT WAS AT**
3 **LEAST 27 YEARS OLD.**

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2019.