

# HOUSE BILL 400

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By: **Delegates Pena–Melnyk, Barron, Crutchfield, J. Lewis, and R. Lewis**

Introduced and read first time: January 22, 2020

Assigned to: Ways and Means and Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Tax – General – Vaping Product Tax**

3 FOR the purpose of requiring vaping product tax revenue to be used for a certain program;  
4 providing for the distribution of vaping product tax revenues; imposing a tax on  
5 vaping products; authorizing a county to impose a tax on vaping products;  
6 establishing a presumption that a vaping product is subject to the vaping product  
7 tax; establishing that certain vaping products are contraband products; establishing  
8 the burden of proving a vaping product is not subject to the vaping product tax;  
9 providing exemptions to the vaping product tax; specifying the vaping product tax  
10 rate; requiring certain wholesalers to file a vaping product tax return; requiring the  
11 return to include certain information; requiring certain wholesalers to keep and  
12 allow inspection of certain records; requiring certain wholesalers to pay the vaping  
13 product tax; requiring the vaping product tax to be paid at certain times; clarifying  
14 that all vaping products used, possessed, or held in the State on or after a certain  
15 date are subject to the full tax enacted under this Act; authorizing the Comptroller  
16 to determine the method of assessing and collecting certain additional taxes;  
17 requiring certain additional taxes to be remitted to the Comptroller by a certain date;  
18 making conforming changes; defining certain terms; and generally relating to the  
19 taxation of vaping products.

20 BY repealing and reenacting, without amendments,

21 Article – Business Regulation

22 Section 16.7–101

23 Annotated Code of Maryland

24 (2015 Replacement Volume and 2019 Supplement)

25 (As enacted by Chapter 12 of the Acts of the General Assembly of 2019)

26 BY repealing and reenacting, without amendments,

27 Article – Insurance

28 Section 31–107(a) and (f) and 31–117

29 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2017 Replacement Volume and 2019 Supplement)

2 BY repealing and reenacting, with amendments,  
3 Article – Insurance  
4 Section 31–107(e) and (g)  
5 Annotated Code of Maryland  
6 (2017 Replacement Volume and 2019 Supplement)

7 BY repealing and reenacting, without amendments,  
8 Article – Tax – General  
9 Section 1–101(a)  
10 Annotated Code of Maryland  
11 (2016 Replacement Volume and 2019 Supplement)

12 BY adding to  
13 Article – Tax – General  
14 Section 1–101(x); 2–1501 through 2–1503 to be under the new subtitle “Subtitle 15.  
15 Vaping Product Tax”; and 12.5–101 through 12.5–301 to be under the new  
16 title “Title 12.5. Vaping Product Tax”  
17 Annotated Code of Maryland  
18 (2016 Replacement Volume and 2019 Supplement)

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

21 **Article – Business Regulation**

22 16.7–101.

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

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

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

28 (2) “Electronic smoking device” includes:

29 (i) an electronic cigarette, an electronic cigar, an electronic cigarillo,  
30 an electronic pipe, an electronic hookah, a vape pen, and vaping liquid; and

31 (ii) any component, part, or accessory of such a device regardless of  
32 whether or not it is sold separately, including any substance intended to be aerosolized or  
33 vaporized during use of the device.

34 (3) “Electronic smoking device” does not include a drug, device, or

1 combination product authorized for sale by the U.S. Food and Drug Administration under  
2 the Federal Food, Drug, and Cosmetic Act.

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

4 (1) manufactures, mixes, or otherwise produces electronic smoking devices  
5 intended for sale in the State, including electronic smoking devices intended for sale in the  
6 United States through an importer; and

7 (2) (i) sells electronic smoking devices to a consumer, if the consumer  
8 purchases or orders the devices through the mail, a computer network, a telephonic  
9 network, or another electronic network, a licensed electronic smoking devices wholesaler  
10 distributor, or a licensed electronic smoking devices wholesaler importer in the State;

11 (ii) if the electronic smoking devices manufacturer also holds a  
12 license to act as an electronic smoking devices retailer or a vape shop vendor, sells electronic  
13 smoking devices to consumers located in the State; or

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

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

18 (1) sells electronic smoking devices to consumers;

19 (2) holds electronic smoking devices for sale to consumers; or

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

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

24 (1) obtains at least 70% of its electronic smoking devices from a holder of  
25 an electronic smoking devices manufacturer license under this subtitle or a business entity  
26 located in the United States; and

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

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

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

31 (1) obtains at least 70% of its electronic smoking devices from a business  
32 entity located in a foreign country; and

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

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

4 (h) "Executive Director" means the Executive Director of the Alcohol and Tobacco  
5 Commission.

6 (i) "License" means:

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

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

10 (ii) act as a licensed electronic smoking devices wholesaler  
11 distributor; or

12 (iii) act as a licensed electronic smoking devices wholesaler importer;  
13 or

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

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

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

17 (j) "Sell" means to exchange or transfer, or to agree to exchange or transfer, title  
18 or possession of property, in any manner or by any means, for consideration.

19 (k) "Vape shop vendor" means an electronic smoking devices business that derives  
20 at least 70% of its revenues, measured by average daily receipts, from the sale of electronic  
21 smoking devices and related accessories.

22 (l) "Vaping liquid" means a liquid that:

23 (1) consists of propylene glycol, vegetable glycerin, or other similar  
24 substance;

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

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

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

## Article – Insurance

1  
2 31–107.

3 (a) There is a Maryland Health Benefit Exchange Fund.

4 (e) The Fund consists of:

5 (1) any user fees or other assessments collected by the Exchange;

6 (2) all revenue deposited into the Fund that is received from the  
7 distribution of the premium tax under § 6–103.2 of this article;

8 (3) income from investments made on behalf of the Fund;

9 (4) interest on deposits or investments of money in the Fund;

10 (5) money collected by the Board as a result of legal or other actions taken  
11 by the Board on behalf of the Exchange or the Fund;

12 (6) money donated to the Fund;

13 (7) money awarded to the Fund through grants;

14 (8) any pass-through funds received from the federal government under a  
15 waiver approved under § 1332 of the Affordable Care Act;

16 (9) any funds designated by the federal government to provide reinsurance  
17 to carriers that offer individual health benefit plans in the State;

18 (10) any funds designated by the State to provide reinsurance to carriers  
19 that offer individual health benefit plans in the State;

20 (11) any federal funds received in accordance with § 31–121 of this title for  
21 the administration of small business tax credits; [and]

22 **(12) ALL REVENUE DEPOSITED INTO THE FUND THAT IS RECEIVED**  
23 **FROM THE DISTRIBUTION OF THE VAPING PRODUCT TAX UNDER § 2–1503 OF THE**  
24 **TAX – GENERAL ARTICLE; AND**

25 **[(12)] (13)** any other money from any other source accepted for the benefit  
26 of the Fund.

27 (f) The Fund may be used only:

28 (1) for the operation and administration of the Exchange in carrying out

1 the purposes authorized under this title; and

2 (2) for the establishment and operation of the State Reinsurance Program.

3 (g) (1) The Board shall maintain separate accounts within the Fund for  
4 Exchange operations and for the State Reinsurance Program.

5 (2) Accounts within the Fund shall contain the money that is intended to  
6 support the purpose for which each account is designated.

7 (3) Funds received from the distribution of the premium tax under §  
8 6–103.2 of this article shall be placed in the account for Exchange operations and may be  
9 used only for the purpose of funding the operation and administration of the Exchange.

10 (4) The following funds may be used only for the purposes of funding the  
11 State Reinsurance Program:

12 (i) any pass-through funds received from the federal government  
13 under a waiver approved under § 1332 of the Affordable Care Act;

14 (ii) any funds designated by the federal government to provide  
15 reinsurance to carriers that offer individual health benefit plans in the State; [and]

16 **(III) ANY VAPING PRODUCT TAX REVENUE DEPOSITED INTO THE**  
17 **FUND UNDER SUBSECTION (E)(12) OF THIS SECTION; AND**

18 [(iii)] **(IV)** any funds designated by the State to provide reinsurance  
19 to carriers that offer individual health benefit plans in the State.

20 31–117.

21 (a) The Exchange, in consultation with the Commissioner and as approved by the  
22 Board, shall establish and implement a State Reinsurance Program:

23 (1) to provide reinsurance to carriers that offer individual health benefit  
24 plans in the State;

25 (2) that meets the requirements of a waiver approved under § 1332 of the  
26 Affordable Care Act; and

27 (3) that is consistent with State and federal law.

28 (b) The State Reinsurance Program shall be designed to mitigate the impact of  
29 high-risk individuals on rates in the individual insurance market inside and outside the  
30 Exchange.

31 (c) (1) Based on available funds, the Exchange, in consultation with the

1 Commissioner and as approved by the Board, shall establish reinsurance payment  
2 parameters for calendar year 2019 and each subsequent calendar year that include:

3 (i) an attachment point;

4 (ii) a coinsurance rate; and

5 (iii) a coinsurance cap.

6 (2) The Exchange, in consultation with the Commissioner and as approved  
7 by the Board, may alter the parameters established in accordance with paragraph (1) of  
8 this subsection as necessary to secure federal approval for a waiver submitted in accordance  
9 with § 31–117.1(a) of this title.

10 (d) Beginning January 1, 2019, funding for reinsurance in the individual market  
11 through the State Reinsurance Program may be made by using:

12 (1) any pass-through funds received from the federal government under a  
13 waiver approved under § 1332 of the Affordable Care Act;

14 (2) any funds designated by the federal government to provide reinsurance  
15 to carriers that offer individual health benefit plans in the State; and

16 (3) any funds designated by the State to provide reinsurance to carriers  
17 that offer individual health benefit plans in the State.

18 (e) The implementation of a State Reinsurance Program for reinsurance in the  
19 individual market shall be contingent on approval from the U.S. Secretary of Health and  
20 Human Services and the U.S. Secretary of the Treasury of a State Innovation Waiver  
21 application under § 1332 of the Affordable Care Act.

22 (f) On or before January 1, 2019, the Exchange shall adopt regulations  
23 implementing the provisions of this section.

## 24 Article – Tax – General

25 1–101.

26 (a) In this article the following words have the meanings indicated.

27 (X) **“VAPING PRODUCT TAX” MEANS THE TAX IMPOSED UNDER TITLE 12.5**  
28 **OF THIS ARTICLE.**

## 29 SUBTITLE 15. VAPING PRODUCT TAX.

30 **2–1501.**

1 FROM THE VAPING PRODUCT TAX REVENUE, THE COMPTROLLER SHALL  
2 DISTRIBUTE THE AMOUNT NECESSARY TO PAY REFUNDS RELATING TO THE VAPING  
3 PRODUCT TAX TO A REFUND ACCOUNT.

4 **2-1502.**

5 AFTER MAKING THE DISTRIBUTION REQUIRED UNDER § 2-1501 OF THIS  
6 SUBTITLE, FROM THE REMAINING VAPING PRODUCT TAX REVENUE THE  
7 COMPTROLLER SHALL DISTRIBUTE THE AMOUNT NECESSARY TO ADMINISTER THE  
8 VAPING PRODUCT TAX TO AN ADMINISTRATIVE COST ACCOUNT.

9 **2-1503.**

10 AFTER MAKING THE DISTRIBUTIONS REQUIRED UNDER §§ 2-1501 AND 2-1502  
11 OF THIS SUBTITLE, THE COMPTROLLER SHALL DISTRIBUTE THE REMAINING VAPING  
12 PRODUCT TAX REVENUE TO THE MARYLAND HEALTH BENEFIT EXCHANGE FUND  
13 ESTABLISHED UNDER § 31-107 OF THE INSURANCE ARTICLE TO BE USED FOR THE  
14 STATE REINSURANCE PROGRAM ESTABLISHED UNDER § 31-117 OF THE  
15 INSURANCE ARTICLE.

## 16 TITLE 12.5. VAPING PRODUCT TAX.

### 17 SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.

18 **12.5-101.**

19 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
20 INDICATED.

21 (B) “ELECTRONIC SMOKING DEVICE” HAS THE MEANING STATED IN §  
22 16.7-101 OF THE BUSINESS REGULATION ARTICLE.

23 (C) “SELL” MEANS TO EXCHANGE OR TRANSFER, OR TO MAKE AN  
24 AGREEMENT TO EXCHANGE OR TRANSFER, TITLE OR POSSESSION OF PROPERTY, IN  
25 ANY MANNER OR BY ANY MEANS, FOR CONSIDERATION.

26 (D) “VAPING LIQUID” HAS THE MEANING STATED IN § 16.7-101 OF THE  
27 BUSINESS REGULATION ARTICLE.

28 (E) “VAPING PRODUCT” MEANS:

29 (1) AN ELECTRONIC SMOKING DEVICE; OR



1           **(2) A VAPING LIQUID.**

2           **(F) (1) “WHOLESALE DISTRIBUTOR” MEANS AN ELECTRONIC SMOKING**  
3 **DEVICES WHOLESALE DISTRIBUTOR, AS DEFINED IN § 16.7–101 OF THE BUSINESS**  
4 **REGULATION ARTICLE.**

5           **(2) “WHOLESALE DISTRIBUTOR” INCLUDES A PERSON AUTHORIZED**  
6 **TO ACT AS AN ELECTRONIC SMOKING DEVICES WHOLESALE DISTRIBUTOR IN**  
7 **ACCORDANCE WITH TITLE 16.7 OF THE BUSINESS REGULATION ARTICLE.**

8           **(G) (1) “WHOLESALE IMPORTER” MEANS AN ELECTRONIC SMOKING**  
9 **DEVICES WHOLESALE IMPORTER, AS DEFINED IN § 16.7–101 OF THE BUSINESS**  
10 **REGULATION ARTICLE.**

11           **(2) “WHOLESALE IMPORTER” INCLUDES A PERSON AUTHORIZED TO**  
12 **ACT AS AN ELECTRONIC SMOKING DEVICES WHOLESALE IMPORTER IN**  
13 **ACCORDANCE WITH TITLE 16.7 OF THE BUSINESS REGULATION ARTICLE.**

14 **12.5–102.**

15           **(A) EXCEPT AS PROVIDED IN § 12.5–104 OF THIS SUBTITLE, A TAX IS**  
16 **IMPOSED ON VAPING PRODUCTS IN THE STATE.**

17           **(B) A COUNTY MAY IMPOSE A TAX ON VAPING PRODUCTS.**

18 **12.5–103.**

19           **(A) A REBUTTABLE PRESUMPTION EXISTS THAT ANY VAPING PRODUCT IN**  
20 **THE STATE IS SUBJECT TO THE VAPING PRODUCT TAX.**

21           **(B) A VAPING PRODUCT IS A CONTRABAND PRODUCT IF:**

22           **(1) THE VAPING PRODUCT IS POSSESSED OR SOLD IN THE STATE IN A**  
23 **MANNER THAT IS NOT AUTHORIZED UNDER THIS TITLE OR UNDER TITLE 16.7 OF**  
24 **THE BUSINESS REGULATION ARTICLE; OR**

25           **(2) THE VAPING PRODUCT IS TRANSPORTED BY VEHICLE IN THE**  
26 **STATE BY A PERSON WHO DOES NOT HAVE A LICENSE REQUIRED UNDER TITLE 16.7**  
27 **OF THE BUSINESS REGULATION ARTICLE, OR WHO IS NOT OTHERWISE AUTHORIZED**  
28 **UNDER § 16.7–102 OF THE BUSINESS REGULATION ARTICLE.**

29           **(C) A PERSON WHO POSSESSES A VAPING PRODUCT HAS THE BURDEN OF**

1 PROVING THAT THE VAPING PRODUCT IS NOT SUBJECT TO THE VAPING PRODUCT  
2 TAX.

3 **12.5–104.**

4 (A) IN THIS SECTION, “CONSUMER” MEANS A PERSON WHO POSSESSES A  
5 VAPING PRODUCT FOR A PURPOSE OTHER THAN SELLING OR TRANSPORTING THE  
6 VAPING PRODUCT.

7 (B) THE VAPING PRODUCT TAX DOES NOT APPLY TO A VAPING PRODUCT  
8 THAT:

9 (1) A LICENSED WHOLESALER DISTRIBUTOR OR WHOLESALER  
10 IMPORTER IS HOLDING FOR SALE OUTSIDE THE STATE OR TO A UNITED STATES  
11 ARMED FORCES EXCHANGE OR COMMISSARY;

12 (2) A CONSUMER BRINGS INTO THE STATE, IF THE QUANTITY  
13 BROUGHT FROM ANOTHER STATE OR A UNITED STATES ARMED FORCES  
14 INSTALLATION OR RESERVATION DOES NOT EXCEED A RETAIL VALUE OF \$100;

15 (3) IS TRANSPORTED BY VEHICLE IN THE STATE BY A PERSON WHO  
16 HAS A LICENSE REQUIRED UNDER TITLE 16.7 OF THE BUSINESS REGULATION  
17 ARTICLE, OR WHO IS OTHERWISE AUTHORIZED UNDER § 16.7–102 OF THE BUSINESS  
18 REGULATION ARTICLE;

19 (4) IS HELD IN STORAGE ON BEHALF OF A LICENSED WHOLESALER  
20 DISTRIBUTOR OR WHOLESALER IMPORTER; OR

21 (5) CONTAINS OR DELIVERS NICOTINE INTENDED FOR HUMAN  
22 CONSUMPTION IF THE DEVICE HAS BEEN APPROVED BY THE U.S. FOOD AND DRUG  
23 ADMINISTRATION FOR SALE AS A TOBACCO CESSATION PRODUCT AND IS BEING  
24 MARKETED AND SOLD SOLELY FOR THAT PURPOSE.

25 **12.5–105.**

26 THE VAPING PRODUCT TAX RATE IS 30% OF THE WHOLESALE PRICE OF THE  
27 VAPING PRODUCT.

28 **SUBTITLE 2. RETURNS AND RECORDS.**

29 **12.5–201.**

30 (A) A WHOLESALER DISTRIBUTOR AND A WHOLESALER IMPORTER SHALL

1 COMPLETE AND FILE WITH THE COMPTROLLER A VAPING PRODUCT TAX RETURN ON  
2 OR BEFORE THE 21ST DAY OF THE MONTH THAT FOLLOWS THE MONTH IN WHICH  
3 THE WHOLESALER DISTRIBUTOR OR WHOLESALER IMPORTER HAS POSSESSION OF  
4 A VAPING PRODUCT.

5 (B) EACH RETURN SHALL STATE FOR THE PERIOD THAT THE RETURN  
6 COVERS THE:

7 (1) QUANTITY OF ELECTRONIC SMOKING DEVICES SOLD; AND

8 (2) VOLUME OF VAPING LIQUID SOLD.

9 12.5-202.

10 (A) EACH WHOLESALER DISTRIBUTOR AND WHOLESALER IMPORTER  
11 SHALL:

12 (1) KEEP AN INVOICE FOR EACH PURCHASE OF:

13 (I) ELECTRONIC SMOKING DEVICES; AND

14 (II) VAPING LIQUID; AND

15 (2) MAINTAIN A COMPLETE AND ACCURATE RECORD OF EACH SALE  
16 OF:

17 (I) AN ELECTRONIC SMOKING DEVICE FOR RESALE OUTSIDE  
18 THE STATE; AND

19 (II) VAPING LIQUID FOR RESALE OUTSIDE THE STATE.

20 (B) A WHOLESALER DISTRIBUTOR AND WHOLESALER IMPORTER SHALL:

21 (1) KEEP THE RECORDS REQUIRED UNDER SUBSECTION (A) OF THIS  
22 SECTION FOR A PERIOD OF 6 YEARS OR FOR A SHORTER PERIOD THAT THE  
23 COMPTROLLER AUTHORIZES; AND

24 (2) ALLOW THE COMPTROLLER TO EXAMINE THE RECORDS.

25 SUBTITLE 3. TAX PAYMENT.

26 12.5-301.

1           **(A) THE VAPING PRODUCT TAX SHALL BE PAID BY THE WHOLESALER**  
2 **DISTRIBUTOR OR WHOLESALER IMPORTER WHO SELLS THE VAPING PRODUCT TO A**  
3 **RETAILER IN THE STATE.**

4           **(B) A WHOLESALER DISTRIBUTOR OR A WHOLESALER IMPORTER SHALL**  
5 **PAY THE VAPING PRODUCT TAX BY FILING A QUARTERLY TAX RETURN, WITH ANY**  
6 **SUPPORTING SCHEDULES, ON FORMS PROVIDED BY THE COMPTROLLER ON THE**  
7 **FOLLOWING DATES COVERING TAX LIABILITIES IN THE PRECEDING QUARTER:**

8                   **(1) JANUARY 21;**

9                   **(2) APRIL 21;**

10                   **(3) JULY 21; AND**

11                   **(4) OCTOBER 21.**

12           SECTION 2. AND BE IT FURTHER ENACTED, That:

13                   (1) as provided in § 12.5–105 of the Tax – General Article, as enacted by  
14 this Act, all vaping products used, possessed, or held in the State on or after July 1, 2020,  
15 by any person for sale or use in the State shall be subject to the full tax on vaping products  
16 as enacted under this Act;

17                   (2) the Comptroller may provide an alternative method of assessing and  
18 collecting the additional tax; and

19                   (3) the revenue attributable to this requirement shall be remitted to the  
20 Comptroller not later than October 15, 2020.

21           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
22 1, 2020.