

HOUSE BILL 134

C2
HB 3/20 – ECM & HGO

EMERGENCY BILL
(PRE-FILED)

1lr1361
CF SB 177

By: **Delegate J. Lewis**

Requested: October 30, 2020

Introduced and read first time: January 13, 2021

Assigned to: Economic Matters and Health and Government Operations

A BILL ENTITLED

AN ACT concerning

Business Regulation – Flavored Tobacco Products – Prohibition

FOR the purpose of providing that certain licenses to manufacture, sell, buy, and store cigarettes, other tobacco products, and electronic smoking devices do not authorize the licensee to or to attempt to manufacture, ship, import, or sell into or within the State a flavored tobacco product; providing that a public statement that cigarettes, other tobacco products, or electronic smoking devices have or produce a certain smell or taste is presumptive evidence that they are flavored tobacco products if the statement is made by certain persons; providing that a person that violates certain cigarette license requirements is guilty of a misdemeanor and subject to certain penalties; providing that a person who engages in an act or attempted act of manufacturing, shipping, importing, or selling into or within the State flavored tobacco products violates a certain provision of law; prohibiting a person from selling or dispensing or offering to sell or dispense a flavored tobacco product through a vending machine; amending the definition of “vaping liquid” to include liquids that convert to other aerosol substances in addition to vapor; defining certain terms; making this Act an emergency measure; and generally relating to the prohibition on manufacturing, shipping, importing, or selling into or within the State flavored tobacco products.

BY repealing and reenacting, with amendments,

Article – Business Regulation

Section 16–101, 16–206, 16–214, 16–3A–01, 16–3A–02, 16.5–101, 16.5–205,

16.5–212, 16.7–101, 16.7–204, and 16.7–211

Annotated Code of Maryland

(2015 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,

Article – Business Regulation

Section 16–3A–03

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Annotated Code of Maryland
(2015 Replacement Volume and 2020 Supplement)

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

Article – Business Regulation

16–101.

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

(b) “Cigarette” means any size or shaped roll for smoking that is made of tobacco or tobacco mixed with another ingredient and wrapped in paper or in any other material except tobacco.

(c) “County license” means a license issued by the clerk to sell cigarettes at retail in a county.

(D) (1) “FLAVORED TOBACCO PRODUCT” MEANS A TOBACCO PRODUCT THAT CONTAINS A TASTE OR SMELL, OTHER THAN THAT OF TOBACCO, THAT IS DISTINGUISHABLE BY AN ORDINARY CONSUMER EITHER BEFORE OR DURING THE CONSUMPTION OF THE TOBACCO PRODUCT.

(2) “FLAVORED TOBACCO PRODUCT” INCLUDES A TOBACCO PRODUCT WITH A TASTE OR SMELL OF FRUIT, MENTHOL, MINT, WINTERGREEN, CHOCOLATE, COCOA, VANILLA, HONEY, A CANDY, A DESSERT, AN ALCOHOLIC BEVERAGE, AN HERB, OR A SPICE.

[(d)] (E) “Sell” means to exchange or transfer, or to agree to exchange or transfer, title or possession of property, in any manner or by any means, for consideration.

[(e)] (F) (1) “Sell cigarettes at retail” means to sell cigarettes to a consumer.

(2) “Sell cigarettes at retail” includes selling cigarettes through a vending machine.

(G) (1) “TOBACCO PRODUCT” MEANS A PRODUCT INTENDED FOR INHALATION, ABSORPTION, INGESTION, SMOKING, HEATING, CHEWING, DISSOLVING, OR ANY OTHER MANNER OF CONSUMPTION BY A HUMAN BEING AND THAT IS MADE OF, DERIVED FROM, OR CONTAINS:

(I) TOBACCO; OR

(II) NICOTINE.

(2) “TOBACCO PRODUCT” INCLUDES:

(I) CIGARETTES, CIGARS, PIPE TOBACCO, CHEWING TOBACCO, SNUFF, SNUS, AND ANY OTHER TOBACCO PRODUCT, AS DEFINED IN § 16.5–101 OF THIS ARTICLE;

(II) ELECTRONIC SMOKING DEVICES, AS DEFINED IN § 16.7–101 OF THIS ARTICLE; AND

(III) ANY COMPONENT, PART, OR ACCESSORY OF ITEMS (I) OR (II) OF THIS PARAGRAPH, REGARDLESS OF NICOTINE CONTENT, INCLUDING FILTERS, ROLLING PAPERS, BLUNT WRAPS, HEMP WRAPS, HOOKAHS, PIPES, AND LIQUIDS USED IN ELECTRONIC SMOKING DEVICES.

(3) “TOBACCO PRODUCT” DOES NOT INCLUDE A DRUG, DEVICE, OR COMBINATION PRODUCT AUTHORIZED FOR SALE BY THE U.S. FOOD AND DRUG ADMINISTRATION UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

16–206.

(a) **[A] SUBJECT TO SUBSECTION (G) OF THIS SECTION,** A manufacturer license authorizes the licensee to:

(1) sell unstamped cigarettes to:

(i) a licensed cigarette wholesaler located in Maryland; and

(ii) a licensed cigarette wholesaler located outside of Maryland if the unstamped cigarettes may lawfully be sold in Maryland;

(2) except as otherwise prohibited or restricted under local law, this article, or the Criminal Law Article, distribute sample cigarettes to consumers located in Maryland;

(3) store unstamped cigarettes in a licensed cigarette storage warehouse for subsequent shipment to licensed wholesalers, federal reservations, or persons out of state; and

(4) upon approval of the Comptroller, act as an agent of a Maryland licensed wholesaler for stamping and distribution of cigarettes.

(b) **[A] SUBJECT TO SUBSECTION (G) OF THIS SECTION,** A retailer license authorizes the licensee to:

- (1) act as a retailer; and
- (2) buy stamped cigarettes from a subwholesaler or wholesaler.

(c) (1) **[A] SUBJECT TO SUBSECTION (G) OF THIS SECTION,** A storage warehouse license authorizes the licensee to operate a storage facility in Maryland for the purpose of storing unstamped cigarettes on behalf of a licensed cigarette manufacturer.

(2) If a storage warehouse licensee is a licensed cigarette wholesaler or licensed cigarette subwholesaler, the storage warehouse license authorizes the holder, **SUBJECT TO SUBSECTION (G) OF THIS SECTION,** to store stamped cigarettes and cigarettes with another state's tax stamp.

(d) **[A] SUBJECT TO SUBSECTION (G) OF THIS SECTION,** A subwholesaler license authorizes the licensee to:

- (1) act as a subwholesaler;
- (2) buy stamped cigarettes from a wholesaler or another subwholesaler;

and

(3) store stamped cigarettes and cigarettes with another state's tax stamp at a licensed cigarette storage facility.

(e) **[A] SUBJECT TO SUBSECTION (G) OF THIS SECTION,** A vending machine operator license authorizes the licensee to:

- (1) act as a vending machine operator; and
- (2) buy stamped cigarettes from a subwholesaler or wholesaler.

(f) **[A] SUBJECT TO SUBSECTION (G) OF THIS SECTION,** A wholesaler license authorizes the licensee to:

- (1) act as a wholesaler;
- (2) buy unstamped cigarettes directly from a cigarette manufacturer;
- (3) hold unstamped cigarettes;
- (4) buy tobacco tax stamps as authorized by § 12-303 of the Tax – General

Article;

- (5) transport unstamped cigarettes in the State;
- (6) sell unstamped cigarettes to another licensed wholesaler if the

Comptroller specifically authorizes;

(7) upon approval of the Comptroller, designate a licensed manufacturer to act as its agent for the stamping and distribution of cigarettes; and

(8) store stamped cigarettes and cigarettes with another state's tax stamp at a licensed cigarette storage facility.

(G) (1) A LICENSE ISSUED UNDER THIS SUBTITLE DOES NOT AUTHORIZE THE LICENSEE TO MANUFACTURE, SHIP, IMPORT, OR SELL INTO OR WITHIN THE STATE A FLAVORED TOBACCO PRODUCT.

(2) A PUBLIC STATEMENT THAT A CIGARETTE HAS OR PRODUCES A TASTE OR SMELL OTHER THAN TOBACCO IS PRESUMPTIVE EVIDENCE THAT THE CIGARETTE IS A FLAVORED TOBACCO PRODUCT, IF THE STATEMENT IS MADE BY:

(I) THE CIGARETTE'S MANUFACTURER;

(II) A PERSON AUTHORIZED BY THE CIGARETTE'S MANUFACTURER TO MAKE PUBLIC STATEMENTS ABOUT THE CIGARETTE;

(III) A LICENSED WHOLESALER OR A PERSON AUTHORIZED BY THE WHOLESALER TO MAKE PUBLIC STATEMENTS ON THE WHOLESALER'S BEHALF;

(IV) A LICENSED SUBWHOLESALER OR A PERSON AUTHORIZED BY THE SUBWHOLESALER TO MAKE PUBLIC STATEMENTS ON THE SUBWHOLESALER'S BEHALF; OR

(V) A LICENSED RETAILER OR A PERSON AUTHORIZED BY THE RETAILER TO MAKE PUBLIC STATEMENTS ON THE RETAILER'S BEHALF.

(3) A PERSON THAT VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000 OR IMPRISONMENT NOT EXCEEDING 30 DAYS OR BOTH.

16-214.

(a) **(1)** Except as otherwise provided in § 16-202(b) of this subtitle, a person may not act, attempt to act, or offer to act as a manufacturer, retailer, storage warehouse, subwholesaler, vending machine operator, or wholesaler in the State unless the person has an appropriate license.

(2) A PERSON THAT MANUFACTURES, SHIPS, IMPORTS, OR SELLS OR ATTEMPTS TO MANUFACTURE, SHIP, IMPORT, OR SELL INTO OR WITHIN THE STATE A FLAVORED TOBACCO PRODUCT VIOLATES PARAGRAPH (1) OF THIS SUBSECTION.

(b) (1) A person who violates this section is guilty of a misdemeanor and, on conviction, is subject to a fine of \$1,000 or imprisonment not exceeding 30 days or both.

(2) Each day that a violation of this section continues is a separate offense.

16-3A-01.

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

(b) “Owner” means the person that owns or operates an establishment in which a vending machine is located.

(c) [(1) “Tobacco product” means any product that is:

(i) intended for human inhalation, absorption, ingestion, smoking, heating, chewing, dissolving, or any other manner of consumption that is made of, derived from, or contains:

1. tobacco; or

2. nicotine; or

(ii) an accessory or a component used in any manner of consumption of a product described in item (i) of this paragraph.

(2) “Tobacco product” includes:

(i) cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and snus;

(ii) electronic smoking devices; and

(iii) filters, rolling papers, pipes, and liquids used in electronic smoking devices regardless of nicotine content.

(3) “Tobacco product” does not include a drug, device, or combination product authorized for sale by the U.S. Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act.

(d)] “Vending machine” means any mechanical, electronic, or similar self-service device that on insertion of a coin, coins, token, or other similar means dispenses a tobacco product.

16-3A-02.

(A) A person may not sell or dispense or offer to sell or dispense a tobacco product through a vending machine in the State, unless the vending machine is located in an establishment that individuals under the age of 21 years are prohibited by law from entering at any time.

(B) A PERSON MAY NOT SELL OR DISPENSE OR OFFER TO SELL OR DISPENSE A FLAVORED TOBACCO PRODUCT THROUGH A VENDING MACHINE IN THE STATE.

16-3A-03.

A person who violates this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100.

16.5-101.

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

(b) “County license” means a license issued by the clerk to sell other tobacco products at retail in a county.

(c) (1) “FLAVORED TOBACCO PRODUCT” MEANS A TOBACCO PRODUCT THAT CONTAINS A TASTE OR SMELL, OTHER THAN THAT OF TOBACCO, THAT IS DISTINGUISHABLE BY AN ORDINARY CONSUMER EITHER BEFORE OR DURING THE CONSUMPTION OF THE TOBACCO PRODUCT.

(2) “FLAVORED TOBACCO PRODUCT” INCLUDES A TOBACCO PRODUCT WITH A TASTE OR SMELL OF FRUIT, MENTHOL, MINT, WINTERGREEN, CHOCOLATE, COCOA, VANILLA, HONEY, A CANDY, A DESSERT, AN ALCOHOLIC BEVERAGE, AN HERB, OR A SPICE.

[(c)] (D) “License” means:

(1) a license issued by the Comptroller under § 16.5-204(a) of this title to:

(i) act as a licensed other tobacco products manufacturer;

(ii) act as an other tobacco products wholesaler; or

(iii) act as an other tobacco products storage warehouse; or

(2) a license issued by the clerk under § 16.5-204(b) of this title to act as an other tobacco products retailer or a tobacconist.

[(d)] (E) “Licensed other tobacco products manufacturer” means a person licensed by the Comptroller under § 16.5-204(a) of this title who:

(1) manufactures or otherwise produces other tobacco products in the State intended for sale in the State, including other tobacco products intended for sale in the State through an importer; and

(2) (i) sells other tobacco products on which the tobacco tax has not been paid to a licensed other tobacco products wholesaler in the State;

(ii) sells other tobacco products on which the tobacco tax has not been paid and which may lawfully be sold in the State to a licensed other tobacco products wholesaler located outside of the State;

(iii) unless otherwise prohibited or restricted under local law, this article, or the Criminal Law Article, distributes sample other tobacco products to consumers located in the State; or

(iv) stores other tobacco products in an other tobacco products warehouse in the State for subsequent shipment to licensed wholesalers, federal reservations, or persons outside of the State.

[(e)] (F) “Licensed other tobacco products retailer” means a person licensed by the clerk under § 16.5–204(b) of this title to act as an other tobacco products retailer.

[(f)] (G) “Licensed other tobacco products storage warehouse” means a facility licensed by the Comptroller under § 16.5–204(a) of this title to act as an other tobacco products storage warehouse.

[(g)] (H) “Licensed other tobacco products wholesaler” means a person licensed by the Comptroller under § 16.5–204(a) of this title to act as an other tobacco products wholesaler.

[(h)] (I) “Licensed tobacconist” means a person licensed by the clerk of a circuit court under § 16.5–204(b) of this title to act as a tobacconist.

[(i)] (J) “Other tobacco products” means:

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

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

[(j)] (K) “Other tobacco products manufacturer” means a person who:

(1) manufactures or otherwise produces other tobacco products intended for sale in this State, including other tobacco products intended for sale in the United States

through an importer;

(2) (i) sells other tobacco products on which the tobacco tax has not been paid to a licensed other tobacco products wholesaler in Maryland;

(ii) sells other tobacco products on which the tobacco tax has not been paid and which may lawfully be sold in Maryland to a licensed other tobacco products wholesaler located outside Maryland;

(iii) unless otherwise prohibited or restricted under local law, this article, or the Criminal Law Article, distributes sample other tobacco products to consumers located in Maryland; or

(iv) stores other tobacco products in an other tobacco products storage warehouse in Maryland for subsequent shipment to licensed other tobacco products wholesalers, federal reservations, or persons out of state; or

(3) is a licensed other tobacco products manufacturer under this title.

[(k)] (L) “Other tobacco products retailer” means a person who:

(1) sells other tobacco products to consumers; or

(2) holds other tobacco products for sale to consumers.

[(l)] (M) “Other tobacco products storage warehouse” means a storage facility in Maryland operated for the purpose of storing other tobacco products on which the tobacco tax has not been paid on behalf of an other tobacco products manufacturer.

[(m)] (N) “Other tobacco products wholesaler” means a person who:

(1) holds other tobacco products for sale to another person for resale; or

(2) sells other tobacco products to another person for resale.

[(n)] (O) (1) “Package” means a pack, box, carton, can, wrap, pouch, bag, or container of any kind designed for retail consumption in which other tobacco products are offered for sale, sold, or otherwise distributed.

(2) “Package” includes not more than 10 cigars offered for sale, sold, or distributed as single cigars.

[(o)] (P) “Pipe tobacco” means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to smoke in a pipe.

[(p)] (Q) “Premium cigars” means cigars that:

(1) have hand-rolled wrappers made from whole tobacco leaves where the filler, binder, and wrapper are made of all tobacco, and may include adhesives or other materials used to maintain size, texture, or flavor; or

(2) are designated as premium cigars by the Comptroller by regulation.

[(q)] (R) “Sell” means to exchange or transfer, or to agree to exchange or transfer, title or possession of property, in any manner or by any means, for consideration.

[(r)] (S) “Sell other tobacco products at retail” means to sell other tobacco products to a consumer.

(T) (1) “TOBACCO PRODUCT” MEANS ANY PRODUCT INTENDED FOR INHALATION, ABSORPTION, INGESTION, SMOKING, HEATING, CHEWING, DISSOLVING, OR ANY OTHER MANNER OF CONSUMPTION BY A HUMAN BEING AND THAT IS MADE OF, DERIVED FROM, OR CONTAINS:

(I) TOBACCO; OR

(II) NICOTINE.

(2) “TOBACCO PRODUCT” INCLUDES:

(I) CIGARETTES, CIGARS, PIPE TOBACCO, CHEWING TOBACCO, SNUFF, SNUS, AND ANY OTHER TOBACCO PRODUCT;

(II) ELECTRONIC SMOKING DEVICES, AS DEFINED UNDER § 16.7–101 OF THIS ARTICLE; AND

(III) ANY COMPONENT, PART, OR ACCESSORY OF ITEMS (I) OR (II) OF THIS PARAGRAPH, REGARDLESS OF NICOTINE CONTENT, INCLUDING FILTERS, ROLLING PAPERS, BLUNT WRAPS, HEMP WRAPS, HOOKAHS, PIPES, AND LIQUIDS USED IN ELECTRONIC SMOKING DEVICES.

(3) “TOBACCO PRODUCT” DOES NOT INCLUDE A DRUG, DEVICE, OR COMBINATION PRODUCT AUTHORIZED FOR SALE BY THE U.S. FOOD AND DRUG ADMINISTRATION UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

[(s)] (U) “Tobacconist” means an other tobacco products business that derives at least 70% of its revenues, measured by average daily receipts, from the sale of other tobacco products and tobacco-related accessories.

(a) **[An] SUBJECT TO SUBSECTION (F) OF THIS SECTION, AN** other tobacco products manufacturer may:

(1) sell other tobacco products on which the tobacco tax has not been paid to:

(i) a licensed other tobacco products wholesaler located in Maryland;

(ii) a licensed other tobacco products wholesaler located outside Maryland if the other tobacco products may be sold lawfully in Maryland; or

(iii) a licensed tobacconist;

(2) sell premium cigars or pipe tobacco on which the tobacco tax has not been paid to a licensed other tobacco products retailer;

(3) except as otherwise prohibited or restricted under local law, this article, or the Criminal Law Article, distribute sample other tobacco products to consumers located in Maryland;

(4) store other tobacco products on which the tobacco tax has not been paid in a licensed other tobacco products storage warehouse for subsequent shipment to licensed other tobacco products wholesalers, federal reservations, or persons out of state; and

(5) on approval of the Comptroller, act as an agent of a Maryland other tobacco products wholesaler for distribution of other tobacco products.

(b) **[An] SUBJECT TO SUBSECTION (F) OF THIS SECTION, AN** other tobacco products retailer license authorizes the licensee to:

(1) act as an other tobacco products retailer;

(2) buy other tobacco products on which the tobacco tax has been paid from an other tobacco products wholesaler; and

(3) buy premium cigars or pipe tobacco on which the tobacco tax has not been paid from an other tobacco products manufacturer.

(c) (1) **[An] SUBJECT TO SUBSECTION (F) OF THIS SECTION, AN** other tobacco products storage warehouse license authorizes the licensee to operate a storage facility in Maryland for the purpose of storing other tobacco products on which the tobacco tax has not been paid on behalf of a licensed other tobacco products manufacturer.

(2) If an other tobacco products storage warehouse licensee is a licensed other tobacco products wholesaler, the other tobacco products storage warehouse license

authorizes the holder, **SUBJECT TO SUBSECTION (F) OF THIS SECTION**, to store other tobacco products on which the tobacco tax has been paid and other tobacco products on which the tobacco tax has been paid to another state.

(d) **[An] SUBJECT TO SUBSECTION (F) OF THIS SECTION**, AN other tobacco products wholesaler license authorizes the licensee to:

- (1) act as an other tobacco products wholesaler;
- (2) buy other tobacco products on which the tobacco tax has not been paid directly from an other tobacco products manufacturer;
- (3) hold other tobacco products on which the tobacco tax has not been paid;
- (4) transport other tobacco products on which the tobacco tax has not been paid in the State;
- (5) sell other tobacco products on which the tobacco tax has not been paid to another licensed other tobacco products wholesaler if the Comptroller specifically authorizes; and
- (6) store other tobacco products on which the tobacco tax has not been paid at a licensed other tobacco products storage warehouse.

(e) **[A] SUBJECT TO SUBSECTION (F) OF THIS SECTION**, A tobacconist license authorizes the licensee to:

- (1) act as a tobacconist; and
- (2) buy other tobacco products on which the tobacco tax has not been paid from an other tobacco products manufacturer.

(F) (1) A LICENSE ISSUED UNDER THIS TITLE DOES NOT AUTHORIZE THE LICENSEE TO MANUFACTURE, SHIP, IMPORT, OR SELL INTO OR WITHIN THE STATE A FLAVORED TOBACCO PRODUCT.

(2) A PUBLIC STATEMENT THAT AN OTHER TOBACCO PRODUCT HAS OR PRODUCES A TASTE OR SMELL OTHER THAN TOBACCO IS PRESUMPTIVE EVIDENCE THAT THE OTHER TOBACCO PRODUCT IS A FLAVORED TOBACCO PRODUCT, IF THE STATEMENT IS MADE BY:

- (I) THE MANUFACTURER OF THE OTHER TOBACCO PRODUCT;**
- (II) A PERSON AUTHORIZED BY THE MANUFACTURER TO MAKE PUBLIC STATEMENTS ABOUT THE OTHER TOBACCO PRODUCT;**

(III) A LICENSED RETAILER OR A PERSON AUTHORIZED BY THE RETAILER TO MAKE PUBLIC STATEMENTS ON THE RETAILER’S BEHALF;

(IV) A STORAGE WAREHOUSE LICENSEE OR A PERSON AUTHORIZED BY THE LICENSEE TO MAKE PUBLIC STATEMENTS ON THE LICENSEE’S BEHALF;

(V) A LICENSED WHOLESALER OR A PERSON AUTHORIZED BY THE WHOLESALER TO MAKE PUBLIC STATEMENTS ON THE WHOLESALER’S BEHALF; OR

(VI) A LICENSED TOBACCONIST OR A PERSON AUTHORIZED BY THE TOBACCONIST TO MAKE PUBLIC STATEMENTS ON THE TOBACCONIST’S BEHALF.

16.5–212.

(a) **(1)** Except as otherwise provided in § 16.5–201(b) of this subtitle, a person may not act, attempt to act, or offer to act as a licensed other tobacco products manufacturer, a licensed other tobacco products retailer, a licensed other tobacco products storage warehouse, a licensed other tobacco products wholesaler, or a licensed tobacconist in the State unless the person has an appropriate license.

(2) A PERSON THAT MANUFACTURES, SHIPS, IMPORTS, OR SELLS OR ATTEMPTS TO MANUFACTURE, SHIP, IMPORT, OR SELL INTO OR WITHIN THE STATE A FLAVORED TOBACCO PRODUCT VIOLATES PARAGRAPH (1) OF THIS SUBSECTION.

(b) (1) A person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 30 days or both.

(2) Each day that a violation of this section continues is a separate offense.

16.7–101.

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

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

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

(2) “Electronic smoking device” includes:

(i) an electronic cigarette, an electronic cigar, an electronic cigarillo,

an electronic pipe, an electronic hookah, a vape pen, and vaping liquid; and

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

(3) “Electronic smoking device” does not include a drug, device, or combination product authorized for sale by the U.S. Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act.

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

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

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

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

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

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

(1) sells electronic smoking devices to consumers;

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

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

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

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

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

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

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

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

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

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

(H) (1) “FLAVORED TOBACCO PRODUCT” MEANS A TOBACCO PRODUCT THAT CONTAINS A TASTE OR SMELL, OTHER THAN THAT OF TOBACCO, THAT IS DISTINGUISHABLE BY AN ORDINARY CONSUMER EITHER BEFORE OR DURING THE CONSUMPTION OF THE TOBACCO PRODUCT.

(2) “FLAVORED TOBACCO PRODUCT” INCLUDES A TOBACCO PRODUCT WITH A TASTE OR SMELL OF FRUIT, MENTHOL, MINT, WINTERGREEN, CHOCOLATE, COCOA, VANILLA, HONEY, A CANDY, A DESSERT, AN ALCOHOLIC BEVERAGE, AN HERB, OR A SPICE.

[(h)] (I) “License” means:

(1) a license issued by the Comptroller under § 16.7–203(a) of this title to:

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

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

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

or

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

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

(ii) act as a licensed vape shop vendor.

[(i)] (J) “Sell” means to exchange or transfer, or to agree to exchange or transfer, title or possession of property, in any manner or by any means, for consideration.

(K) (1) “TOBACCO PRODUCT” MEANS ANY PRODUCT INTENDED FOR INHALATION, ABSORPTION, INGESTION, SMOKING, HEATING, CHEWING,

DISSOLVING, OR ANY OTHER MANNER OF CONSUMPTION BY A HUMAN BEING AND THAT IS MADE OF, DERIVED FROM, OR CONTAINS:

(I) TOBACCO; OR

(II) NICOTINE.

(2) “TOBACCO PRODUCT” INCLUDES:

(I) CIGARETTES, CIGARS, PIPE TOBACCO, CHEWING TOBACCO, SNUFF, SNUS, AND OTHER TOBACCO PRODUCTS, AS DEFINED IN § 16.5–101 OF THIS ARTICLE;

(II) ELECTRONIC SMOKING DEVICES; AND

(III) ANY COMPONENT, PART, OR ACCESSORY OF ITEMS (I) OR (II) OF THIS PARAGRAPH, REGARDLESS OF NICOTINE CONTENT, INCLUDING FILTERS, ROLLING PAPERS, BLUNT WRAPS, HEMP WRAPS, HOOKAHS, PIPES, AND LIQUIDS USED IN ELECTRONIC SMOKING DEVICES.

(3) “TOBACCO PRODUCT” DOES NOT INCLUDE A DRUG, DEVICE, OR COMBINATION PRODUCT AUTHORIZED FOR SALE BY THE U.S. FOOD AND DRUG ADMINISTRATION UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

~~[(j)]~~ (L) “Vape shop vendor” means an electronic smoking devices business that derives at least 70% of its revenues, measured by average daily receipts, from the sale of electronic smoking devices and related accessories.

~~[(k)]~~ (M) “Vaping liquid” means a liquid that:

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

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

(3) may or may not contain nicotine; and

(4) converts to vapor **OR OTHER AEROSOL SUBSTANCE** intended for inhalation when heated in an electronic device.

16.7–204.

(a) ~~[An]~~ **SUBJECT TO SUBSECTION (E) OF THIS SECTION**, AN electronic smoking devices manufacturer license authorizes the licensee to:

- (1) sell electronic smoking devices to:
 - (i) a licensed electronic smoking devices wholesaler located in the State;
 - (ii) an electronic smoking devices wholesaler or retailer located outside the State if the electronic smoking devices may be sold lawfully in Maryland;
 - (iii) a licensed vape shop vendor; and
 - (iv) a consumer if:
 1. the licensee manufactured the devices; and
 2. the consumer purchases or orders the devices through the mail, a computer network, a telephonic network, or another electronic network;
 - (2) if the electronic smoking devices manufacturer licensee also holds a license to act as an electronic smoking devices retailer or a vape shop vendor, transfer electronic smoking devices to inventory for sale under the retail license or vape shop license; and
 - (3) except as otherwise prohibited or restricted under local law, this article, or the Criminal Law Article, distribute electronic smoking devices products to a licensed electronic smoking devices retailer or vape shop vendor.
- (b) **[An] SUBJECT TO SUBSECTION (E) OF THIS SECTION, AN** electronic smoking devices retailer license authorizes the licensee to:
- (1) sell electronic smoking devices to consumers;
 - (2) buy electronic smoking devices from an electronic smoking devices wholesaler distributor or electronic smoking devices wholesaler importer;
 - (3) if the electronic smoking devices retailer licensee also holds a license to act as an electronic smoking devices manufacturer, sell at retail electronic smoking devices manufactured under the manufacturer license; and
 - (4) except as otherwise prohibited or restricted under local law, this article, the Criminal Law Article, or § 24–305 of the Health – General Article, distribute sample electronic smoking devices products to consumers in the State.
- (c) **[An] SUBJECT TO SUBSECTION (E) OF THIS SECTION, AN** electronic smoking devices wholesaler distributor license or electronic smoking devices wholesaler importer license authorizes the licensee to:
- (1) sell electronic smoking devices to electronic smoking devices retailers

and vape shop vendors;

(2) buy electronic smoking devices directly from an electronic smoking devices manufacturer and an electronic smoking devices wholesaler distributor or electronic smoking devices wholesaler importer;

(3) hold electronic smoking devices; and

(4) sell electronic smoking devices to another licensed electronic smoking devices wholesaler distributor or electronic smoking devices wholesaler importer.

(d) **[A] SUBJECT TO SUBSECTION (E) OF THIS SECTION, A** vape shop vendor license authorizes the licensee to:

(1) sell electronic smoking devices as a vape shop vendor;

(2) if the vape shop vendor licensee also holds a license to act as an electronic smoking devices manufacturer, sell at retail electronic smoking devices manufactured under the manufacturer license; and

(3) buy electronic smoking devices from an electronic smoking devices manufacturer, an electronic smoking devices wholesaler distributor, or an electronic smoking devices wholesaler importer.

(E) (1) A LICENSE ISSUED UNDER THIS SUBTITLE DOES NOT AUTHORIZE THE LICENSEE TO MANUFACTURE, SHIP, IMPORT, OR SELL INTO OR WITHIN THE STATE A FLAVORED TOBACCO PRODUCT.

(2) A PUBLIC STATEMENT THAT AN ELECTRONIC SMOKING DEVICE HAS OR PRODUCES A TASTE OR SMELL OTHER THAN TOBACCO IS PRESUMPTIVE EVIDENCE THAT THE ELECTRONIC SMOKING DEVICE IS A FLAVORED TOBACCO PRODUCT, IF THE STATEMENT IS MADE BY:

(I) THE MANUFACTURER OF THE ELECTRONIC SMOKING DEVICE;

(II) A PERSON AUTHORIZED BY THE MANUFACTURER TO MAKE PUBLIC STATEMENTS ABOUT THE ELECTRONIC SMOKING DEVICE;

(III) A LICENSED RETAILER OR A PERSON AUTHORIZED BY THE RETAILER TO MAKE PUBLIC STATEMENTS ON THE RETAILER'S BEHALF;

(IV) A LICENSED WHOLESALER OR A PERSON AUTHORIZED BY THE WHOLESALER TO MAKE PUBLIC STATEMENTS ON THE WHOLESALER'S BEHALF; OR

(V) A LICENSED VAPE SHOP VENDOR OR A PERSON AUTHORIZED BY THE VAPE SHOP VENDOR TO MAKE PUBLIC STATEMENTS ON THE VAPE SHOP VENDOR'S BEHALF.

16.7–211.

(a) **(1)** A person may not act, attempt to act, or offer to act as an electronic smoking devices manufacturer, an electronic smoking devices retailer, an electronic smoking devices wholesaler distributor, an electronic smoking devices wholesaler importer, or a vape shop vendor in the State unless the person has an appropriate license.

(2) A PERSON THAT MANUFACTURES, SHIPS, IMPORTS, OR SELLS OR ATTEMPTS TO MANUFACTURE, SHIP, IMPORT, OR SELL INTO OR WITHIN THE STATE A FLAVORED TOBACCO PRODUCT VIOLATES PARAGRAPH (1) OF THIS SUBSECTION.

(b) **(1)** A person that violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 30 days or both.

(2) Each day that a violation of this section continues is a separate offense.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three–fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.