

SENATE BILL 990

C2, J1

2lr2410

By: **Senator Jennings**

Introduced and read first time: February 20, 2022

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Electronic Smoking Devices – Prohibitions and Requirements**

3 FOR the purpose of establishing certain limitations on certain retailers relating to the sale
4 of electronic smoking devices; prohibiting the advertisement or promotion of
5 electronic smoking devices in certain locations and publications; prohibiting the
6 marketing of electronic smoking devices to certain individuals in a certain manner;
7 requiring certain manufacturers of electronic smoking devices to execute and deliver
8 a certain attestation to the Executive Director of the Alcohol and Tobacco
9 Commission on or before a certain date; requiring the Executive Director to develop
10 and make available to the public a certain directory; prohibiting a person from
11 manufacturing, distributing, selling, bartering, or furnishing certain electronic
12 smoking devices in the State; and generally relating to advertising, marketing, sale,
13 and manufacture of electronic smoking devices.

14 BY repealing and reenacting, without amendments,
15 Article – Business Regulation
16 Section 16.7–101
17 Annotated Code of Maryland
18 (2015 Replacement Volume and 2021 Supplement)

19 BY adding to
20 Article – Business Regulation
21 Section 16.7–301 through 16.7–304 to be under the new subtitle “Subtitle 3. General
22 Requirements and Prohibited Acts”
23 Annotated Code of Maryland
24 (2015 Replacement Volume and 2021 Supplement)

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

27 **Article – Business Regulation**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 16.7–101.

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

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

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

7 (2) “Electronic smoking device” includes:

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

10 (ii) except as provided in paragraph (3) of this subsection, any
11 component, part, or accessory of such a device regardless of whether or not it is sold
12 separately, including any substance intended to be aerosolized or vaporized during use of
13 the device.

14 (3) “Electronic smoking device” does not include:

15 (i) a drug, device, or combination product authorized for sale by the
16 U.S. Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act; or

17 (ii) a battery or battery charger when sold separately.

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

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

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

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

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

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

2 (1) sells electronic smoking devices to consumers;

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

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

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

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

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

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

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

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

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

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

20 (h) “Executive Director” means the Executive Director of the Alcohol and Tobacco
21 Commission.

22 (i) “License” means:

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

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

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

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

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

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

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

4 (j) “Sell” means to exchange or transfer, or to agree to exchange or transfer, title
5 or possession of property, in any manner or by any means, for consideration.

6 (k) “Vape shop vendor” means an electronic smoking devices business that derives
7 at least 70% of its revenues, measured by average daily receipts, from the sale of electronic
8 smoking devices and related accessories.

9 (l) “Vaping liquid” means a liquid that:

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

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

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

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

16 **SUBTITLE 3. GENERAL REQUIREMENTS AND PROHIBITED ACTS.**

17 **16.7–301.**

18 **(A) IN ORDER TO REQUIRE A CONSUMER SEEKING ACCESS TO AN**
19 **ELECTRONIC SMOKING DEVICE AT A RETAIL BUSINESS TO ASK FOR ASSISTANCE**
20 **FROM AN ELECTRONIC SMOKING DEVICE RETAILER, AN ELECTRONIC SMOKING**
21 **DEVICE RETAILER MAY NOT DISPLAY FOR SALE AN ELECTRONIC SMOKING DEVICE**
22 **UNLESS THE DEVICE IS LOCATED:**

23 **(1) BEHIND A COUNTER IN AN AREA ACCESSIBLE ONLY TO THE**
24 **RETAILER AND EMPLOYEES OF THE RETAILER; OR**

25 **(2) WITHIN A LOCKED CASE.**

26 **(B) AN ELECTRONIC SMOKING DEVICE RETAILER SHALL LIMIT THE**
27 **AMOUNT OF ELECTRONIC SMOKING DEVICES THAT CAN BE PURCHASED DURING A**
28 **SINGLE TRANSACTION TO NOT MORE THAN:**

1 **(1) ONE ELECTRONIC SMOKING DEVICE PRODUCT THAT DOES NOT**
2 **INCLUDE VAPING LIQUID AND FOUR SEPARATE FINISHED VAPING LIQUID PRODUCT**
3 **PACKAGES; OR**

4 **(2) FOUR SELF-CONTAINED, SINGLE-USE, ELECTRONIC SMOKING**
5 **DEVICES.**

6 **16.7-302.**

7 **(A) A PERSON MAY NOT ADVERTISE ELECTRONIC SMOKING DEVICES IN ANY**
8 **OUTDOOR AREA, OTHER THAN ON THE PREMISES OF A RETAIL BUSINESS WHERE**
9 **ELECTRONIC SMOKING DEVICES ARE SOLD OR OFFERED FOR SALE, WITHIN 1,000**
10 **FEET OF ANY PUBLIC OR PRIVATE ELEMENTARY OR SECONDARY SCHOOL OR PUBLIC**
11 **PARK.**

12 **(B) A PERSON MAY NOT ADVERTISE OR PROMOTE AN ELECTRONIC SMOKING**
13 **DEVICE IN A NEWSPAPER, MAGAZINE, PERIODICAL, OR OTHER PRINT OR DIGITAL**
14 **PUBLICATION DISTRIBUTED IN THE STATE FOR WHICH MORE THAN 15% OF THE**
15 **READERSHIP COMPRISES INDIVIDUALS WHO ARE YOUNGER THAN 21 YEARS OF AGE**
16 **AS MEASURED BY COMPETENT AND RELIABLE SURVEY EVIDENCE.**

17 **(C) A PERSON MAY NOT KNOWINGLY MARKET ELECTRONIC SMOKING**
18 **DEVICES TO INDIVIDUALS UNDER THE AGE OF 21 YEARS BY THE USE OF:**

19 **(1) PACKAGING OR LABELING RESEMBLING PACKAGING OR**
20 **LABELING USED FOR CHILDREN'S JUICE BOXES, MILK CARTONS, CANDIES, AND**
21 **COOKIES; OR**

22 **(2) PACKAGING OR LABELING THAT CONTAINS WORDS OR GRAPHICS**
23 **DEPICTING OR REFERENCING ANY OF THE FOLLOWING:**

24 **(I) A CONSUMER PRODUCT DESIGNED OR INTENDED**
25 **PRIMARILY FOR CHILDREN, INCLUDING PRODUCTS DESCRIBED IN 15 U.S.C. §**
26 **2052(A)(2);**

27 **(II) COMICS OR SUPERHEROES;**

28 **(III) AN ATHLETE OR A CELEBRITY; OR**

29 **(IV) A VIDEO GAME, A MOVIE, OR AN ANIMATED TELEVISION**
30 **SHOW.**

31 **16.7-303.**

1 **(A) IN THIS SECTION, “DIRECTORY” MEANS THE LIST MAINTAINED BY THE**
2 **EXECUTIVE DIRECTOR OF THE:**

3 **(1) MANUFACTURERS OF ELECTRONIC SMOKING DEVICES THAT HAVE**
4 **PROVIDED ATTESTATIONS THAT COMPLY WITH THE REQUIREMENTS OF**
5 **SUBSECTION (B) OF THIS SECTION; AND**

6 **(2) ELECTRONIC SMOKING DEVICES THAT ARE LISTED IN THE**
7 **MANUFACTURER ATTESTATIONS.**

8 **(B) ON OR BEFORE OCTOBER 1, 2022, EACH MANUFACTURER OF AN**
9 **ELECTRONIC SMOKING DEVICE THAT IS SOLD OR INTENDED TO BE SOLD IN THE**
10 **STATE, WHETHER DIRECTLY OR THROUGH A WHOLESALE DISTRIBUTOR, RETAILER,**
11 **OR SIMILAR INTERMEDIARY, SHALL EXECUTE AND DELIVER AN ATTESTATION**
12 **UNDER THE PENALTY OF PERJURY TO THE EXECUTIVE DIRECTOR CERTIFYING**
13 **THAT, AS OF THE DATE OF THE ATTESTATION:**

14 **(1) (I) THE ELECTRONIC SMOKING DEVICE WAS ON THE MARKET IN**
15 **THE UNITED STATES AS OF AUGUST 8, 2016;**

16 **(II) THE MANUFACTURER HAS APPLIED FOR A MARKETING**
17 **ORDER FOR THE ELECTRONIC SMOKING DEVICE BY SUBMITTING A PREMARKET**
18 **TOBACCO PRODUCT APPLICATION (PMTA) ON OR BEFORE SEPTEMBER 9, 2020, TO**
19 **THE U.S. FOOD AND DRUG ADMINISTRATION; AND**

20 **(III) THE APPLICATION REMAINS PENDING WITH THE U.S. FOOD**
21 **AND DRUG ADMINISTRATION; OR**

22 **(2) THE MANUFACTURER HAS RECEIVED A MARKETING GRANTED**
23 **ORDER OR OTHER AUTHORIZATION UNDER 21 U.S.C. § 387J FOR THE ELECTRONIC**
24 **SMOKING DEVICE FROM THE U.S. FOOD AND DRUG ADMINISTRATION.**

25 **(C) THE MANUFACTURER SHALL NOTIFY THE EXECUTIVE DIRECTOR**
26 **WITHIN 30 DAYS AFTER ANY MATERIAL CHANGE TO THE ATTESTATION, INCLUDING**
27 **IF THE U.S. FOOD AND DRUG ADMINISTRATION HAS:**

28 **(1) ISSUED A MARKETING GRANTED ORDER OR OTHER**
29 **AUTHORIZATION;**

30 **(2) ISSUED A MARKETING DENIAL ORDER; OR**

1 **(3) ORDERED THE MANUFACTURER TO REMOVE THE ELECTRONIC**
2 **SMOKING DEVICE, EITHER TEMPORARILY OR PERMANENTLY, FROM THE MARKET IN**
3 **THE UNITED STATES.**

4 **(D) THE EXECUTIVE DIRECTOR SHALL:**

5 **(1) DEVELOP A DIRECTORY;**

6 **(2) ON OR BEFORE JANUARY 1, 2023, MAKE THE DIRECTORY**
7 **AVAILABLE FOR PUBLIC INSPECTION ON THE WEBSITE OF THE ALCOHOL AND**
8 **TOBACCO COMMISSION; AND**

9 **(3) UPDATE THE DIRECTORY AS NECESSARY TO CORRECT MISTAKES**
10 **AND ADD OR REMOVE MANUFACTURERS OF ELECTRONIC SMOKING DEVICES IN**
11 **ORDER TO KEEP THE DIRECTORY IN CONFORMITY WITH THE REQUIREMENTS OF**
12 **THIS SECTION.**

13 **(E) BEGINNING JANUARY 1, 2023, A PERSON MAY NOT KNOWINGLY,**
14 **DIRECTLY OR INDIRECTLY, MANUFACTURE, DISTRIBUTE, SELL, BARTER, OR**
15 **FURNISH IN THE STATE ANY ELECTRONIC SMOKING DEVICE THAT IS NOT INCLUDED**
16 **IN THE DIRECTORY.**

17 **16.7-304.**

18 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
19 **INDICATED.**

20 **(2) “COUNTERFEIT ELECTRONIC SMOKING DEVICE” MEANS ANY**
21 **ELECTRONIC SMOKING DEVICE THAT:**

22 **(I) WITHOUT AUTHORIZATION, BEARS THE TRADEMARK,**
23 **TRADE NAME, OR OTHER IDENTIFYING MARK, IMPRINT, DESIGN, OR ANY LIKENESS**
24 **THEREOF, OF A LEGALLY MARKETED ELECTRONIC SMOKING DEVICE; OR**

25 **(II) IS NOT MANUFACTURED BY THE MANUFACTURER**
26 **INDICATED ON THE PRODUCT PACKAGING, LABEL, OR CONTAINER.**

27 **(3) “ILLCIT ELECTRONIC SMOKING DEVICE” MEANS:**

28 **(I) A COUNTERFEIT ELECTRONIC SMOKING DEVICE;**

29 **(II) AN ELECTRONIC SMOKING DEVICE THAT WAS NOT**
30 **MANUFACTURED, PREPARED, COMPOUNDED, OR PROCESSED BY A PERSON**

1 REGISTERED WITH THE U.S. FOOD AND DRUG ADMINISTRATION IN ACCORDANCE
2 WITH 21 U.S.C. § 387E; OR

3 (III) AN ELECTRONIC SMOKING DEVICE NOT LISTED IN THE
4 DIRECTORY MAINTAINED BY THE EXECUTIVE DIRECTOR UNDER § 16.7-303 OF THIS
5 SUBTITLE.

6 (B) BEGINNING JANUARY 1, 2023, A PERSON MAY NOT KNOWINGLY
7 MANUFACTURE, DISTRIBUTE, SELL, BARTER, OR FURNISH AN ILLICIT ELECTRONIC
8 SMOKING DEVICE IN THE STATE.

9 (C) (1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
10 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF:

11 (I) \$2,500 FOR THE FIRST OFFENSE;

12 (II) \$5,000 FOR A SECOND OFFENSE; AND

13 (III) \$10,000 FOR A THIRD OR SUBSEQUENT OFFENSE.

14 (2) EACH SALE OF AN ILLICIT ELECTRONIC SMOKING DEVICE IN THE
15 STATE SHALL CONSTITUTE A SEPARATE OFFENSE.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
17 1, 2022.