

HOUSE BILL 1414

J1, Q4, C2

4lr2358

By: **Delegate Fair**

Introduced and read first time: February 9, 2024

Assigned to: Economic Matters and Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Electronic Smoking Devices – Licensure, Indoor Use, and Taxation – Alterations**

3 FOR the purpose of altering the grounds for disciplining the holder of an electronic smoking
4 devices license or license applicant; altering the scope of the Clean Indoor Act and
5 other provisions of law prohibiting smoking indoors to also prohibit the use of
6 electronic smoking devices; altering the sales and use tax on certain electronic
7 smoking devices; and generally relating to the regulation of electronic smoking
8 devices in the State.

9 BY repealing and reenacting, with amendments,
10 Article – Business Regulation
11 Section 16.7–207
12 Annotated Code of Maryland
13 (2015 Replacement Volume and 2023 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article – Health – General
16 Section 24–205, 24–501, and 24–505
17 Annotated Code of Maryland
18 (2023 Replacement Volume)

19 BY repealing and reenacting, with amendments,
20 Article – Labor and Employment
21 Section 5–608
22 Annotated Code of Maryland
23 (2016 Replacement Volume and 2023 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article – Public Utilities
26 Section 9–206
27 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2020 Replacement Volume and 2023 Supplement)

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 11–104(j)
Annotated Code of Maryland
(2022 Replacement Volume and 2023 Supplement)

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

Article – Business Regulation

16.7–207.

(a) Subject to the hearing provisions of § 16.7–208 of this subtitle, the Executive Director may deny a license to an applicant, reprimand a licensee, or suspend or revoke a license if the applicant or licensee:

(1) fraudulently or deceptively obtains or attempts to obtain a license for the applicant, licensee, or another person;

(2) fraudulently or deceptively uses a license;

(3) buys electronic smoking devices for resale:

(i) in violation of a license; or

(ii) from a person that is not a licensed electronic smoking devices manufacturer or a licensed electronic smoking devices wholesaler;

(4) is convicted, under the laws of the United States or of any other state, of:

(i) a felony; or

(ii) a misdemeanor that is a crime of moral turpitude and is directly related to the fitness and qualification of the applicant or licensee;

(5) violates federal, State, or local law regarding the sale of electronic smoking devices; [or]

(6) SELLS AN ELECTRONIC SMOKING DEVICE THAT HAS NOT BEEN APPROVED BY THE U.S. FOOD AND DRUG ADMINISTRATION; OR

[(6)] (7) violates this title, Title 16, or Title 16.5 of this article or regulations adopted under these titles.

1 (b) Subject to the hearing provisions of § 16.7–208 of this subtitle, the Executive
2 Director shall deny a license to any applicant that has had a license revoked under this
3 section until:

4 (1) 1 year has passed since the license was revoked; and

5 (2) it satisfactorily appears to the Executive Director that the applicant
6 will comply with this title and any regulations adopted under this title.

7 (c) Prior to the issuance or renewal of any license, the Executive Director shall
8 conduct an investigation with regard to:

9 (1) the applicant;

10 (2) the business to be operated; and

11 (3) the facts set forth in the application.

12 Article – Health – General

13 24–205.

14 (a) In this section, “smoking” means [the]:

15 (1) **THE** act of smoking or carrying a burning:

16 [(1)] (I) Cigar;

17 [(2)] (II) Cigarette;

18 [(3)] (III) Pipe; or

19 [(4)] (IV) Other tobacco product of any kind; **OR**

20 (2) **THE INHALATION OR EXHALATION OF VAPOR FROM AN**
21 **ELECTRONIC SMOKING DEVICE, AS DEFINED IN § 16.7–101 OF THE BUSINESS**
22 **REGULATION ARTICLE.**

23 (b) Every director of a nursing home, health clinic, or physician’s office shall make
24 and carry out a plan that adequately protects the health of nonsmoking patients by
25 regulating the smoking of tobacco products on the premises.

26 (c) (1) An individual may not smoke in any area of a hospital.

1 (2) The hospital director shall provide for the posting and placement of
2 conspicuous signs that clearly indicate that smoking is not permitted in the hospital.

3 (d) (1) Notwithstanding the provisions of § 24–504 of this title, this section
4 does not apply to patients who are:

5 (i) In a facility for the treatment of mental disorders as defined in §
6 10–101(g) of this article;

7 (ii) In a facility where the average patient stay is more than 30 days;
8 or

9 (iii) In an acute care hospital and the attending physician authorizes
10 smoking, in writing, as part of the care for the patient.

11 (2) Smoking permitted under this section shall be in designated areas that
12 are considered safe and provide nonsmoking patients, family members, and employees
13 protection from tobacco smoke.

14 (3) Smoking may not be permitted where nonsmoking patients sleep.

15 24–501.

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

17 (b) “Cannabis” has the meaning stated in § 5–101 of the Criminal Law Article.

18 **(C) “ELECTRONIC SMOKING DEVICE” HAS THE MEANING STATED IN §**
19 **16.7–101 OF THE BUSINESS REGULATION ARTICLE.**

20 **[(c)] (D)** “Employee” has the meaning stated in § 5–101 of the Labor and
21 Employment Article.

22 **[(d)] (E)** “Employer” has the meaning stated in § 5–101 of the Labor and
23 Employment Article.

24 **[(e)] (F)** “Environmental smoke” means **[the]:**

25 **(1) THE** complex mixture formed from the escaping smoke of a burning
26 tobacco, cannabis, or hemp product or smoke exhaled by the smoker; **OR**

27 **(2) THE COMPLEX MIXTURE FORMED FROM THE ESCAPING VAPOR OF**
28 **AN ELECTRONIC SMOKING DEVICE OR VAPOR EXHALED BY A USER OF AN**
29 **ELECTRONIC SMOKING DEVICE.**

30 **[(f)] (G)** “Indoor area open to the public” means:

1 (1) An indoor area or a portion of an indoor area accessible to the public by
2 either invitation or permission; or

3 (2) An indoor area of any establishment licensed or permitted under the
4 Alcoholic Beverages and Cannabis Article for the sale or possession of alcoholic beverages.

5 ~~[(g)]~~ **(H)** “Place of employment” has the meaning stated in § 5–101 of the Labor
6 and Employment Article.

7 ~~[(h)]~~ **(I)** “Smoking” means ~~[the]~~:

8 **(1) THE** burning of a lighted cigarette, cigar, pipe, or any other matter or
9 substance containing, wholly or in part, tobacco, cannabis, or hemp; **AND**

10 **(2) THE INHALATION OR EXHALATION OF VAPOR FROM AN**
11 **ELECTRONIC SMOKING DEVICE.**

12 24–505.

13 This subtitle does not apply to:

14 (1) Private homes, residences, including residences used as a business or
15 place of employment, unless being used by a person who is licensed or registered under
16 Title 5, Subtitle 5 of the Family Law Article to provide child care, and private vehicles,
17 unless being used for the public transportation of children, or as part of health care or child
18 care transportation;

19 (2) A hotel or motel room rented to one or more guests as long as the total
20 percent of hotel or motel rooms being so used does not exceed 25%;

21 (3) A retail tobacco business that is a sole proprietorship, limited liability
22 company, corporation, partnership, or other enterprise, in which:

23 (i) The primary activity is the retail sale of tobacco products and
24 accessories; and

25 (ii) The sale of other products is incidental;

26 (4) Any facility of a manufacturer, importer, wholesaler, or distributor of
27 tobacco products **OR ELECTRONIC SMOKING DEVICES** or of any tobacco leaf dealer or
28 processor in which employees of the manufacturer, importer, wholesaler, distributor, or
29 processor work or congregate; or

30 (5) A research or educational laboratory for the purpose of conducting
31 scientific research into the health effects of tobacco smoke.

Article – Labor and Employment

1
2 5–608.

3 (a) Except as provided in § 24–505 of the Health – General Article, an individual
4 may not smoke in an indoor place of employment.

5 (b) (1) The Department shall adopt regulations that prohibit environmental
6 [tobacco] smoke, as defined in § 24–501 of the Health – General Article, in indoor places of
7 employment not normally open to the general public.

8 (2) Subject to subsection (c) of this section, a person who violates a
9 regulation adopted under this subtitle:

10 (i) for a first violation, shall be issued a written reprimand by the
11 Commissioner or the Commissioner’s designee;

12 (ii) for a second violation, is subject to a civil penalty of \$100; and

13 (iii) for each subsequent violation, is subject to a civil penalty not less
14 than \$250.

15 (c) The Commissioner may waive a penalty established under subsection (b) of
16 this section, giving consideration to factors that include:

17 (1) the seriousness of the violation; and

18 (2) any demonstrated good faith measures to comply with the provisions of
19 this subtitle.

20 (d) A penalty collected by the Commissioner under this section shall be paid to
21 the Cigarette Restitution Fund established under § 7–317 of the State Finance and
22 Procurement Article.

23 (e) An employer who discharges or discriminates against an employee because
24 that employee has made a complaint under this section, has given information to the
25 Department in accordance with this section, has caused to be instituted or is about to cause
26 to be instituted a proceeding under this section, or has testified or is about to testify in a
27 proceeding, shall be deemed in violation of this section and shall be subject to a civil penalty
28 of at least \$2,000 but not more than \$10,000 for each violation.

29 (f) (1) An employee may not:

30 (i) make a groundless or malicious complaint to the Commissioner
31 or an authorized representative of the Commissioner;

1 (ii) in bad faith, bring an action under this subtitle; or

2 (iii) in bad faith, testify in an action under this subtitle or a
3 proceeding that relates to the subject of this subtitle.

4 (2) The Commissioner may bring an action for injunctive relief and
5 damages against a person who violates the provisions of paragraph (1) of this subsection.

6 Article – Public Utilities

7 9–206.

8 (a) **IN THIS SECTION, “ELECTRONIC SMOKING DEVICE” HAS THE MEANING**
9 **STATED IN § 16.7–101 OF THE BUSINESS REGULATION ARTICLE.**

10 (B) The owner and operator of an intrastate motor bus carrier shall prohibit the
11 smoking of tobacco products **AND THE USE OF ELECTRONIC SMOKING DEVICES** while
12 the bus is in public service.

13 [(b)] (C) A person may not smoke tobacco products **OR USE ELECTRONIC**
14 **SMOKING DEVICES** on a bus of an intrastate motor bus carrier.

15 [(c)] (D) The Commission may adopt regulations to carry out the provisions of
16 this section.

17 [(d)] (E) A person who violates a provision of this section is subject to a civil
18 penalty not exceeding \$25.

19 Article – Tax – General

20 11–104.

21 (j) (1) (i) In this subsection, the following words have the meanings
22 indicated.

23 (ii) “Electronic smoking device” has the meaning stated in §
24 16.7–101 of the Business Regulation Article.

25 (iii) “Tobacco pipe” means a pipe made primarily of meerschaum,
26 wood, or porcelain, with a bowl designed to be used without a screen or filter.

27 (iv) “Vaping liquid” has the meaning stated in § 16.7–101 of the
28 Business Regulation Article.

29 (2) Except as provided in paragraph (3) of this subsection, the sales and
30 use tax rate is [12% of the taxable price for]:

1 (i) **30% OF THE TAXABLE PRICE FOR** electronic smoking devices;
2 and

3 (ii) **12% OF THE TAXABLE PRICE FOR** tobacco pipes.

4 (3) The sales and use tax for vaping liquid sold in a container that contains
5 5 milliliters or less of vaping liquid is 60% of the taxable price.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
7 1, 2024.