

HOUSE BILL 3

C2

~~EMERGENCY BILL~~
(PRE-FILED)

01r0611
CF SB 233

By: **Delegate D.E. Davis**

Requested: September 4, 2019

Introduced and read first time: January 8, 2020

Assigned to: Economic Matters and Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 9, 2020

CHAPTER _____

1 AN ACT concerning

2 **Business Regulation – ~~Flavored Tobacco Products – Electronic Smoking~~**
3 **Devices, Prohibition on Flavoring, and Sales to Military Members**

4 FOR the purpose of providing that certain licenses to manufacture, sell, buy, and store
5 cigarettes, ~~other tobacco products, and electronic smoking devices~~ do not authorize
6 the licensee to or to attempt to manufacture, ship, import, or sell into or within the
7 State a ~~flavored tobacco product~~ cigarette that has a characterizing flavor; providing
8 that certain licenses to manufacture, sell, buy, and store other tobacco products do
9 not authorize the licensee to or to attempt to manufacture, ship, import, or sell into
10 or within the State certain other tobacco products that have a characterizing flavor
11 in certain circumstances; providing that certain licenses to manufacture, sell, buy,
12 and store electronic smoking devices do not authorize the licensee to or to attempt to
13 manufacture, ship, import, or sell certain types of electronic smoking devices;
14 providing that a public statement that cigarettes, or other tobacco products, or
15 electronic smoking devices have or produce a certain smell or taste is presumptive
16 evidence that they are flavored tobacco products have a characterizing flavor if the
17 statement is made by certain persons; providing that a person that violates certain
18 cigarette license requirements is guilty of a misdemeanor and subject to certain
19 penalties; providing that a person who engages in an act or attempted act of
20 manufacturing, shipping, importing, or selling into or within the State ~~flavored~~
21 certain tobacco products violates a certain provision of law; prohibiting a person from
22 selling or dispensing or offering to sell or dispense a ~~flavored tobacco product~~
23 cigarette that has a characterizing flavor through a vending machine; repealing
24 certain authorizations granted to an electronic smoking devices licensee; prohibiting

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 the sale of electronic smoking devices by mail, computer network, telephonic
 2 network, or other electronic network; establishing penalties for a person who sells or
 3 ships electronic smoking devices by mail, computer network, telephonic network, or
 4 other electronic network; repealing exceptions for certain members of the military to
 5 prohibitions relating to the distribution and sale of tobacco products to individuals
 6 under a certain age; amending the definition of “vaping liquid” to include liquids that
 7 convert to other aerosol substances in addition to vapor; defining certain terms;
 8 altering certain definitions; ~~making this Act an emergency measure; providing for a~~
 9 delayed effective date; making the provisions of this Act severable; declaring certain
 10 findings and the intent of the General Assembly; and generally relating to the
 11 prohibition on manufacturing, shipping, importing, or selling into or within the State
 12 flavored certain tobacco products.

13 BY repealing and reenacting, with amendments,
 14 Article – Business Regulation
 15 Section 16–101, 16–206, ~~16–209~~, 16–214, ~~16–3A–01~~, 16–3A–02, ~~16–501(b)(1)~~,
 16 16.5–101, 16.5–205, 16.5–212, ~~16.5–214.1~~, 16.7–101, 16.7–204, ~~16.7–204.1~~,
 17 and 16.7–211
 18 Annotated Code of Maryland
 19 (2015 Replacement Volume and 2019 Supplement)

20 BY repealing and reenacting, without amendments,
 21 Article – Business Regulation
 22 Section ~~16–3A–03~~ 16–223, 16–3A–03, and 16.5–217
 23 Annotated Code of Maryland
 24 (2015 Replacement Volume and 2019 Supplement)

25 BY adding to
 26 Article – Business Regulation
 27 Section 16.7–215
 28 Annotated Code of Maryland
 29 (2015 Replacement Volume and 2019 Supplement)

30 BY repealing and reenacting, with amendments,
 31 Article – Criminal Law
 32 Section 10–107
 33 Annotated Code of Maryland
 34 (2012 Replacement Volume and 2019 Supplement)

35 BY repealing and reenacting, without amendments,
 36 Article – Health – General
 37 Section 24–305(a) and (c) and 24–307(b) and (c)
 38 Annotated Code of Maryland
 39 (2019 Replacement Volume)

40 BY repealing and reenacting, with amendments,
 41 Article – Health – General

1 Section 24–305(b) and (d) and 24–307(a) and (d)
 2 Annotated Code of Maryland
 3 (2019 Replacement Volume)

4 BY repealing and reenacting, with amendments,
 5 Article – Local Government
 6 Section 1–1203
 7 Annotated Code of Maryland
 8 (2013 Volume and 2019 Supplement)

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

11 **Article – Business Regulation**

12 16–101.

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

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

17 **(c) (1) “CHARACTERIZING FLAVOR” MEANS A DISTINGUISHABLE TASTE**
 18 **OR AROMA, OTHER THAN THE TASTE OR AROMA OF TOBACCO, IMPARTED OR**
 19 **DETECTABLE BEFORE OR DURING CONSUMPTION OF A TOBACCO PRODUCT.**

20 **(2) “CHARACTERIZING FLAVOR” INCLUDES A TASTE OR AN AROMA OF**
 21 **ANY FRUIT, CANDY, DESSERT, ALCOHOLIC BEVERAGE, HERB, OR SPICE, INCLUDING**
 22 **CHOCOLATE, VANILLA, HONEY, COCOA, MENTHOL, MINT, OR WINTERGREEN.**

23 **(3) “CHARACTERIZING FLAVOR” DOES NOT INCLUDE ANY**
 24 **INGREDIENT, INCLUDING ANY ADDITIVE OR FLAVORING, THAT DOES NOT**
 25 **CONTRIBUTE TO THE DISTINGUISHABLE TASTE OR AROMA OF THE PRODUCT.**

26 ~~(d)~~ **(D)** “County license” means a license issued by the clerk to sell cigarettes at retail
 27 in a county.

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

32 ~~(2) “FLAVORED TOBACCO PRODUCT” INCLUDES A TOBACCO~~
 33 ~~PRODUCT WITH A TASTE OR SMELL OF FRUIT, MENTHOL, MINT, WINTERGREEN,~~

1 ~~CHOCOLATE, COCOA, VANILLA, HONEY, A CANDY, A DESSERT, AN ALCOHOLIC~~
 2 ~~BEVERAGE, AN HERB, OR A SPICE.~~

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

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

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

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

13 ~~(I) TOBACCO; OR~~

14 ~~(II) NICOTINE.~~

15 ~~(2) “TOBACCO PRODUCT” INCLUDES:~~

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

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

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

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

28 16–206.

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

31 (1) sell unstamped cigarettes to:

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

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

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

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

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

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

14 (1) act as a retailer; and

15 (2) buy stamped cigarettes from a subwholesaler or wholesaler.

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

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

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

25 (1) act as a subwholesaler;

26 (2) buy stamped cigarettes from a wholesaler or another subwholesaler;
27 and

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

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

1 (1) act as a vending machine operator; and

2 (2) buy stamped cigarettes from a subwholesaler or wholesaler.

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

5 (1) act as a wholesaler;

6 (2) buy unstamped cigarettes directly from a cigarette manufacturer;

7 (3) hold unstamped cigarettes;

8 (4) buy tobacco tax stamps as authorized by § 12–303 of the Tax – General
9 Article;

10 (5) transport unstamped cigarettes in the State;

11 (6) sell unstamped cigarettes to another licensed wholesaler if the
12 Comptroller specifically authorizes;

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

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

17 **(G) (1) A LICENSE ISSUED UNDER THIS SUBTITLE DOES NOT AUTHORIZE**
18 **THE LICENSEE TO MANUFACTURE, SHIP, IMPORT, OR SELL INTO OR WITHIN THE**
19 **STATE A ~~FLAVORED TOBACCO PRODUCT~~ CIGARETTE THAT HAS A CHARACTERIZING**
20 **FLAVOR.**

21 **(2) A PUBLIC STATEMENT THAT A CIGARETTE HAS OR PRODUCES A**
22 **TASTE OR SMELL OTHER THAN TOBACCO IS PRESUMPTIVE EVIDENCE THAT THE**
23 **CIGARETTE IS A ~~FLAVORED TOBACCO PRODUCT~~ HAS A CHARACTERIZING FLAVOR, IF**
24 **THE STATEMENT IS MADE BY:**

25 **(I) THE CIGARETTE'S MANUFACTURER;**

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

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

1 (IV) A LICENSED SUBWHOLESALE OR A PERSON AUTHORIZED
2 BY THE SUBWHOLESALE TO MAKE PUBLIC STATEMENTS ON THE
3 SUBWHOLESALE'S BEHALF; OR

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

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

9 16-209.

10 (a) A licensee shall display a license in the way that the Comptroller requires by
11 regulation.

12 (b) A licensee who sells cigarettes through a vending machine:

13 (1) shall place each package of cigarettes in the machine so that when the
14 package is visible the tax stamps required by § 12-304 of the Tax – General Article are also
15 visible; and

16 (2) in the way that the Comptroller requires by regulation, shall:

17 (i) identify each vending machine with a conspicuous label that
18 states the licensee's name, address, and telephone number; and

19 (ii) display on a conspicuous label applicable prohibitions and
20 penalties under § 10-107 of the Criminal Law Article.

21 (c) (1) A licensee shall post a sign in a location that is clearly visible to the
22 consumer that states:

23 “No person under the age of 21 may be sold tobacco products [without military
24 identification]”.

25 (2) The sign required under this subsection shall be written in letters at
26 least one-half inch high.

27 16-214.

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

1 **(2) A PERSON WHO MANUFACTURES, SHIPS, IMPORTS, OR SELLS OR**
 2 **ATTEMPTS TO MANUFACTURE, SHIP, IMPORT, OR SELL INTO OR WITHIN THE STATE**
 3 **~~A FLAVORED TOBACCO PRODUCT~~ CIGARETTE THAT HAS A CHARACTERIZING FLAVOR**
 4 **VIOLATES PARAGRAPH (1) OF THIS SUBSECTION.**

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

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

8 ~~16-3A-01.~~

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

10 ~~(b) "Owner" means the person that owns or operates an establishment in which a~~
 11 ~~vending machine is located.~~

12 ~~(c) [(1) "Tobacco product" means any product that is:~~

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

16 ~~1. tobacco; or~~

17 ~~2. nicotine; or~~

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

20 ~~(2) "Tobacco product" includes:~~

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

22 ~~(ii) electronic smoking devices; and~~

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

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

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

1 16-223.

2 (a) This section applies to a person who is engaged in the business of selling
3 or distributing cigarettes.

4 (b) (1) Except as provided in paragraph (2) of this subsection, a person
5 covered under this section may not:

6 (i) sell or ship cigarettes, ordered or purchased by mail or
7 through a computer network, telephonic network, or other electronic network by a
8 consumer or other unlicensed recipient, directly to a consumer or other unlicensed recipient
9 in this State; or

10 (ii) cause cigarettes, ordered or purchased by mail or through
11 a computer network, telephonic network, or other electronic network by a consumer or
12 other unlicensed recipient, to be shipped directly to a consumer or other unlicensed
13 recipient in this State.

14 (2) A licensed retailer may deliver no more than two cartons of
15 cigarettes directly to a consumer if the delivery is made by the licensed retailer or an
16 employee of the licensed retailer.

17 (c) (1) A licensee who sells or ships cigarettes in violation of this section
18 or causes cigarettes to be shipped in violation of this section is:

19 (i) subject to discipline by the Comptroller under § 16-210 of
20 this subtitle; and

21 (ii) guilty of a felony and, on conviction, is subject to a fine not
22 exceeding \$50 for each carton of cigarettes transported or imprisonment not exceeding 2
23 years or both.

24 (2) A person other than a licensee who sells or ships cigarettes in
25 violation of this section or causes cigarettes to be shipped in violation of this section is guilty
26 of a felony and, on conviction, is subject to a fine not exceeding \$50 for each carton of
27 cigarettes transported or imprisonment not exceeding 2 years or both.

28 16-3A-02.

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

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

1 16-3A-03.

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

4 16-501.

5 (b) (1) "Brand family" means all styles of cigarettes sold under the same
6 trademark, regardless of whether the cigarettes are differentiated from one another by
7 means of additional modifiers or descriptors such as ["menthol",] "lights", "kings", "100s",
8 or other differentiation.

9 16.5-101.

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

11 **(B) (1) "CHARACTERIZING FLAVOR" MEANS A DISTINGUISHABLE TASTE**
12 **OR AROMA, OTHER THAN THE TASTE OR AROMA OF TOBACCO, IMPARTED OR**
13 **DETECTABLE BEFORE OR DURING CONSUMPTION OF A TOBACCO PRODUCT.**

14 **(2) "CHARACTERIZING FLAVOR" INCLUDES A TASTE OR AN AROMA OF**
15 **ANY FRUIT, CANDY, DESSERT, ALCOHOLIC BEVERAGE, HERB, OR SPICE, INCLUDING**
16 **CHOCOLATE, VANILLA, HONEY, COCOA, MENTHOL, MINT, OR WINTERGREEN.**

17 **(3) "CHARACTERIZING FLAVOR" DOES NOT INCLUDE ANY**
18 **INGREDIENT, INCLUDING ANY ADDITIVE OR FLAVORING, THAT DOES NOT**
19 **CONTRIBUTE TO THE DISTINGUISHABLE TASTE OR AROMA OF A TOBACCO PRODUCT.**

20 ~~(b)~~ **(C)** "County license" means a license issued by the clerk to sell other tobacco
21 products at retail in a county.

22 ~~(c)~~ **(1) "FLAVORED TOBACCO PRODUCT" MEANS A TOBACCO PRODUCT**
23 **THAT CONTAINS A TASTE OR SMELL, OTHER THAN THAT OF TOBACCO, THAT IS**
24 **DISTINGUISHABLE BY AN ORDINARY CONSUMER EITHER BEFORE OR DURING THE**
25 **CONSUMPTION OF THE TOBACCO PRODUCT.**

26 ~~(2)~~ **"FLAVORED TOBACCO PRODUCT" INCLUDES A TOBACCO**
27 **PRODUCT WITH A TASTE OR SMELL OF FRUIT, MENTHOL, MINT, WINTERGREEN,**
28 **CHOCOLATE, COCOA, VANILLA, HONEY, A CANDY, A DESSERT, AN ALCOHOLIC**
29 **BEVERAGE, AN HERB, OR A SPICE.**

30 **[(c)] (D)** "License" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (1) manufactures or otherwise produces other tobacco products intended
8 for sale in this State, including other tobacco products intended for sale in the United States
9 through an importer;

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

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

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

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

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

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

23 (1) sells other tobacco products to consumers; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 ~~(I) TOBACCO; OR~~

23 ~~(II) NICOTINE.~~

24 ~~(2) “TOBACCO PRODUCT” INCLUDES:~~

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

27 ~~(II) ELECTRONIC SMOKING DEVICES, AS DEFINED UNDER §~~
28 ~~16.7 101 OF THIS ARTICLE; AND~~

29 ~~(III) ANY COMPONENT, PART, OR ACCESSORY OF ITEMS (I) OR (II)~~
30 ~~OF THIS PARAGRAPH, REGARDLESS OF NICOTINE CONTENT, INCLUDING FILTERS,~~

1 ~~ROLLING PAPERS, BLUNT WRAPS, HEMP WRAPS, HOOKAHS, PIPES, AND LIQUIDS~~
 2 ~~USED IN ELECTRONIC SMOKING DEVICES.~~

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

6 (T) "SMOKING BAR" MEANS A RETAIL TOBACCO ESTABLISHMENT:

7 (1) THAT IS PRIMARILY ENGAGED IN THE RETAIL SALE OF
 8 PREMIUM CIGARS, PIPE TOBACCO, OR OTHER TOBACCO PRODUCTS FOR
 9 ON-PREMISES CONSUMPTION;

10 (2) IN WHICH THE SALE OF OTHER PRODUCTS IS INCIDENTAL;
 11 AND

12 (3) THAT PRIMARILY OCCUPIES AN ENCLOSED INDOOR SPACE.

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

16 16.5-205.

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

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

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

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

25 (iii) a licensed tobacconist;

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

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

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

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

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

8 (1) act as an other tobacco products retailer;

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

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

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

17 (2) If an other tobacco products storage warehouse licensee is a licensed
18 other tobacco products wholesaler, the other tobacco products storage warehouse license
19 authorizes the holder, **SUBJECT TO SUBSECTION (F) OF THIS SECTION**, to store other
20 tobacco products on which the tobacco tax has been paid and other tobacco products on
21 which the tobacco tax has been paid to another state.

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

24 (1) act as an other tobacco products wholesaler;

25 (2) buy other tobacco products on which the tobacco tax has not been paid
26 directly from an other tobacco products manufacturer;

27 (3) hold other tobacco products on which the tobacco tax has not been paid;

28 (4) transport other tobacco products on which the tobacco tax has not been
29 paid in the State;

30 (5) sell other tobacco products on which the tobacco tax has not been paid
31 to another licensed other tobacco products wholesaler if the Comptroller specifically
32 authorizes; and

1 (6) store other tobacco products on which the tobacco tax has not been paid
2 at a licensed other tobacco products storage warehouse.

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

5 (1) act as a tobacconist; and

6 (2) buy other tobacco products on which the tobacco tax has not been paid
7 from an other tobacco products manufacturer.

8 (F) (1) ~~A EXCEPT AS IT APPLIES TO PREMIUM CIGARS, A LICENSE ISSUED~~
9 ~~UNDER THIS TITLE DOES NOT AUTHORIZE THE LICENSEE TO MANUFACTURE, SHIP,~~
10 ~~IMPORT, OR SELL INTO OR WITHIN THE STATE A FLAVORED TOBACCO PRODUCT AN~~
11 ~~OTHER TOBACCO PRODUCT THAT HAS A CHARACTERIZING FLAVOR FOR~~
12 ~~OFF-PREMISES CONSUMPTION.~~

13 (2) THIS SUBSECTION MAY NOT BE INTERPRETED TO PROHIBIT
14 THE HOLDER OF A LICENSE ISSUED UNDER THIS TITLE FROM MANUFACTURING,
15 SHIPPING, IMPORTING, OR SELLING INTO OR WITHIN THE STATE:

16 (I) PREMIUM CIGARS WITH OR WITHOUT A
17 CHARACTERIZING FLAVOR FOR ON- OR OFF-PREMISES CONSUMPTION;

18 (II) PIPE TOBACCO WITH A CHARACTERIZING FLAVOR
19 FOR ON-PREMISES CONSUMPTION AT A SMOKING BAR; OR

20 (III) AN OTHER TOBACCO PRODUCT WITH A
21 CHARACTERIZING FLAVOR FOR ON-PREMISES CONSUMPTION AT A SMOKING BAR.

22 ~~(2)~~ (3) A PUBLIC STATEMENT THAT AN OTHER TOBACCO PRODUCT
23 HAS OR PRODUCES A TASTE OR SMELL OTHER THAN TOBACCO IS PRESUMPTIVE
24 EVIDENCE THAT THE OTHER TOBACCO PRODUCT IS A FLAVORED TOBACCO
25 PRODUCT, IF THE STATEMENT IS MADE BY:

26 (I) THE MANUFACTURER OF THE OTHER TOBACCO PRODUCT;

27 (II) A PERSON AUTHORIZED BY THE MANUFACTURER TO MAKE
28 PUBLIC STATEMENTS ABOUT THE OTHER TOBACCO PRODUCT;

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

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

4 (V) A LICENSED WHOLESALER OR A PERSON AUTHORIZED BY
5 THE WHOLESALER TO MAKE PUBLIC STATEMENTS ON THE WHOLESALER'S BEHALF;
6 OR

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

9 16.5-212.

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

15 (2) ~~A PERSON WHO MANUFACTURES, SHIPS, IMPORTS, OR SELLS OR~~
16 ~~ATTEMPTS IT IS A VIOLATION OF PARAGRAPH (1) OF THIS SUBSECTION FOR A~~
17 ~~PERSON TO MANUFACTURE, SHIP, IMPORT, OR SELL OR ATTEMPT TO~~
18 ~~MANUFACTURE, SHIP, IMPORT, OR SELL INTO OR WITHIN THE STATE A FLAVORED~~
19 ~~TOBACCO PRODUCT VIOLATES PARAGRAPH (1) OF THIS SUBSECTION. FOR~~
20 ~~OFF-PREMISES CONSUMPTION, AN OTHER TOBACCO PRODUCT WITH A~~
21 ~~CHARACTERIZING FLAVOR, OTHER THAN PREMIUM CIGARS.~~

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

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

26 16.5-214.1.

27 (a) A licensed other tobacco products retailer shall post a sign in a location that
28 is clearly visible to the consumer that states:

29 "No person under the age of 21 may be sold tobacco products [without military
30 identification]".

31 (b) The sign required under this section shall be written in letters at least
32 one-half inch high.

33 16.5-217.

1 (a) This section applies to a person who is engaged in the business of selling or
2 distributing other tobacco products.

3 (b) (1) This subsection does not apply to the order, purchase, sale, or shipment
4 of premium cigars or pipe tobacco by a licensed other tobacco products retailer or licensed
5 tobacconist.

6 (2) Except as provided in paragraph (3) of this subsection, a person covered
7 under this section may not:

8 (i) sell or ship other tobacco products, ordered or purchased by mail
9 or through a computer network, telephonic network, or other electronic network by a
10 consumer or other unlicensed recipient, directly to a consumer or other unlicensed recipient
11 in this State; or

12 (ii) cause other tobacco products, ordered or purchased by mail or
13 through a computer network, telephonic network, or other electronic network by a
14 consumer or other unlicensed recipient, to be shipped directly to a consumer or other
15 unlicensed recipient in this State.

16 (3) A licensed other tobacco products retailer or licensed tobacconist may
17 deliver not more than two packages of other tobacco products directly to a consumer if the
18 delivery is made by the licensed other tobacco products retailer or licensed tobacconist or
19 an employee of the licensed other tobacco products retailer or licensed tobacconist.

20 (c) (1) A licensee who sells or ships other tobacco products in violation of this
21 section or causes other tobacco products to be shipped in violation of this section is:

22 (i) subject to discipline by the Comptroller under § 16.5–208 of this
23 subtitle; and

24 (ii) guilty of a felony and on conviction is subject to a fine not
25 exceeding \$50 for each package of other tobacco products transported or imprisonment not
26 exceeding 2 years or both.

27 (2) A person other than a licensee who sells or ships other tobacco products
28 in violation of this section or causes other tobacco products to be shipped in violation of this
29 section is guilty of a felony and on conviction is subject to a fine not exceeding \$50 for each
30 package of other tobacco products transported or imprisonment not exceeding 2 years or
31 both.

32 16.7–101.

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

1 **(B) (1) “CARTRIDGE-BASED ESD” MEANS AN ELECTRONIC SMOKING**
2 **DEVICE THAT CONSISTS OF, INCLUDES, OR INVOLVES A CARTRIDGE OR POD THAT**
3 **HOLDS LIQUID THAT IS TO BE AEROSOLIZED THROUGH PRODUCT USE.**

4 **(2) “CARTRIDGE-BASED ESD” INCLUDES AN ELECTRONIC SMOKING**
5 **DEVICE THAT INCLUDES A CARTRIDGE, A POD, OR ANY SMALL ENCLOSED UNIT,**
6 **SEALED OR UNSEALED, THAT IS DESIGNED TO FIT WITHIN OR OPERATE AS PART OF**
7 **AN ELECTRONIC SMOKING DEVICE.**

8 **(C) “CLOSED ESD” MEANS AN ELECTRONIC SMOKING DEVICE, WHETHER**
9 **DISPOSABLE, RECHARGEABLE, OR REUSABLE, THAT IS SEALED AND PREFILLED**
10 **WITH VAPING LIQUID IN A CONTAINER THAT AFFIXES DIRECTLY TO THE BATTERY OR**
11 **HEATING MECHANISM OF THE ELECTRONIC SMOKING DEVICE.**

12 ~~(D)~~ **(D)** “County license” means a license issued by the clerk to sell electronic
13 smoking devices to consumers in a county.

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

16 (2) “Electronic smoking device” includes:

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

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

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

25 ~~(F)~~ **(F)** “Electronic smoking devices manufacturer” means a person that:

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

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

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

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

7 ~~(e)~~ **(G)** “Electronic smoking devices retailer” means a person that:

8 (1) sells electronic smoking devices to consumers;

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

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

13 ~~(f)~~ **(H)** “Electronic smoking devices wholesaler distributor” means a person that:

14 (1) obtains at least 70% of its electronic smoking devices from a holder of
15 an electronic smoking devices manufacturer license under this subtitle or a business entity
16 located in the United States; 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 ~~(g)~~ **(I)** “Electronic smoking devices wholesaler importer” means a person that:

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

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

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

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

30 ~~**(2)** “FLAVORED TOBACCO PRODUCT” INCLUDES A TOBACCO~~
31 ~~PRODUCT WITH A TASTE OR SMELL OF FRUIT, MENTHOL, MINT, WINTERGREEN,~~

~~1 CHOCOLATE, COCOA, VANILLA, HONEY, A CANDY, A DESSERT, AN ALCOHOLIC
2 BEVERAGE, AN HERB, OR A SPICE.~~

3 [(h)] ~~(J)~~ (J) "License" means:

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

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

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

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

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

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

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

13 (K) "OPEN ESD" MEANS AN ELECTRONIC SMOKING DEVICE THAT HAS A
14 TANK, RESERVOIR, OR OTHER CONTAINER FOR VAPING LIQUID THAT CAN BE
15 MANUALLY FILLED AND REFILLED WITH VAPING LIQUID.

16 [(i)] ~~(J)~~ (L) "Sell" means to exchange or transfer, or to agree to exchange or
17 transfer, title or possession of property, in any manner or by any means, for consideration.

18 ~~(K) (1) "TOBACCO PRODUCT" MEANS ANY PRODUCT INTENDED FOR~~
19 ~~INHALATION, ABSORPTION, INGESTION, SMOKING, HEATING, CHEWING,~~
20 ~~DISSOLVING, OR ANY OTHER MANNER OF CONSUMPTION BY A HUMAN BEING AND~~
21 ~~THAT IS MADE OF, DERIVED FROM, OR CONTAINS:~~

22 ~~(I) TOBACCO; OR~~

23 ~~(II) NICOTINE.~~

24 ~~(2) "TOBACCO PRODUCT" INCLUDES:~~

25 ~~(I) CIGARETTES, CIGARS, PIPE TOBACCO, CHEWING TOBACCO,~~
26 ~~SNUFF, SNUS, AND OTHER TOBACCO PRODUCTS, AS DEFINED IN § 16.5 101 OF THIS~~
27 ~~TITLE;~~

28 ~~(II) ELECTRONIC SMOKING DEVICES; AND~~

~~(H) 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)~~ (M) "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)~~ (N) "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; **AND**

(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;~~

1 (2) if the electronic smoking devices manufacturer licensee also holds a
2 license to act as an electronic smoking devices retailer or a vape shop vendor, transfer
3 electronic smoking devices to inventory for sale under the retail license or vape shop license;
4 and

5 (3) except as otherwise prohibited or restricted under local law, this article,
6 or the Criminal Law Article, distribute electronic smoking devices products to a licensed
7 electronic smoking devices retailer or vape shop vendor.

8 (b) **[An] SUBJECT TO SUBSECTION (E) OF THIS SECTION, AN** electronic
9 smoking devices retailer license authorizes the licensee to:

10 (1) sell electronic smoking devices to consumers;

11 (2) buy electronic smoking devices from an electronic smoking devices
12 wholesaler distributor or electronic smoking devices wholesaler importer;

13 (3) if the electronic smoking devices retailer licensee also holds a license to
14 act as an electronic smoking devices manufacturer, sell at retail electronic smoking devices
15 manufactured under the manufacturer license; and

16 (4) except as otherwise prohibited or restricted under local law, this article,
17 the Criminal Law Article, or § 24–305 of the Health – General Article, distribute sample
18 electronic smoking devices products to consumers in the State.

19 (c) **[An] SUBJECT TO SUBSECTION (E) OF THIS SECTION, AN** electronic
20 smoking devices wholesaler distributor license or electronic smoking devices wholesaler
21 importer license authorizes the licensee to:

22 (1) sell electronic smoking devices to electronic smoking devices retailers
23 and vape shop vendors;

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

27 (3) hold electronic smoking devices; and

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

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

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

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

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

7 (E) (1) A LICENSE ISSUED UNDER THIS SUBTITLE DOES NOT AUTHORIZE
 8 THE LICENSEE TO MANUFACTURE, SHIP, IMPORT, OR SELL INTO OR WITHIN THE
 9 STATE ~~A FLAVORED TOBACCO PRODUCT. A CARTRIDGE-BASED ESD OR CLOSED~~
 10 ESD.

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

15 ~~(I) THE MANUFACTURER OF THE ELECTRONIC SMOKING~~
 16 ~~DEVICE;~~

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

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

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

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

27 16.7-204.1.

28 (a) A retail licensee shall post a sign in a location that is clearly visible to the
 29 consumer that states:

30 "No person under the age of 21 may be sold tobacco products [without military
 31 identification]".

32 (b) The sign required under this section shall be written in letters at least
 33 one-half inch high.

1 16.7-211.

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

6 (2) ~~A PERSON WHO MANUFACTURES, SHIPS, IMPORTS, OR SELLS OR~~
7 ~~ATTEMPTS IT SHALL BE A VIOLATION OF PARAGRAPH (1) OF THIS SUBSECTION FOR~~
8 ~~A PERSON TO MANUFACTURE, SHIP, IMPORT, OR SELL OR ATTEMPT TO~~
9 ~~MANUFACTURE, SHIP, IMPORT, OR SELL INTO OR WITHIN THE STATE A FLAVORED~~
10 ~~TOBACCO PRODUCT VIOLATES PARAGRAPH (1) OF THIS SUBSECTION A~~
11 ~~CARTRIDGE-BASED ESD OR CLOSED ESD.~~

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

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

16 16.7-215.

17 (A) THIS SECTION APPLIES ONLY TO A PERSON WHO IS ENGAGED IN THE
18 BUSINESS OF SELLING OR DISTRIBUTING ELECTRONIC SMOKING DEVICES.

19 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
20 PERSON COVERED UNDER THIS SECTION MAY NOT:

21 (I) SELL OR SHIP ELECTRONIC SMOKING DEVICES, ORDERED
22 OR PURCHASED BY MAIL OR THROUGH A COMPUTER NETWORK, TELEPHONIC
23 NETWORK, OR OTHER ELECTRONIC NETWORK, BY A CONSUMER OR OTHER
24 UNLICENSED RECIPIENT, DIRECTLY TO A CONSUMER OR OTHER UNLICENSED
25 RECIPIENT IN THE STATE; OR

26 (II) CAUSE ELECTRONIC SMOKING DEVICES, ORDERED OR
27 PURCHASED BY MAIL OR THROUGH A COMPUTER NETWORK, TELEPHONIC
28 NETWORK, OR OTHER ELECTRONIC NETWORK BY A CONSUMER OR OTHER
29 UNLICENSED RECIPIENT, TO BE SHIPPED DIRECTLY TO A CONSUMER OR OTHER
30 UNLICENSED RECIPIENT IN THE STATE.

31 (2) A LICENSED ELECTRONIC SMOKING DEVICES RETAILER MAY
32 DELIVER NOT MORE THAN TWO ELECTRONIC SMOKING DEVICES DIRECTLY TO A
33 CONSUMER IF THE DELIVERY IS MADE BY THE LICENSED ELECTRONIC SMOKING

1 DEVICES RETAILER OR AN EMPLOYEE OF THE LICENSED ELECTRONIC SMOKING
2 DEVICES RETAILER.

3 (C) (1) A LICENSEE WHO SELLS OR SHIPS ELECTRONIC SMOKING
4 DEVICES IN VIOLATION OF THIS SECTION OR CAUSES ELECTRONIC SMOKING
5 DEVICES TO BE SHIPPED IN VIOLATION OF THIS SECTION IS:

6 (I) SUBJECT TO DISCIPLINE BY THE EXECUTIVE DIRECTOR
7 UNDER § 16.7-207 OF THIS ARTICLE; AND

8 (II) GUILTY OF A MISDEMEANOR AND ON CONVICTION IS
9 SUBJECT TO A FINE NOT EXCEEDING \$1,000 OR IMPRISONMENT NOT EXCEEDING 30
10 DAYS OR BOTH.

11 (2) A PERSON OTHER THAN A LICENSEE WHO SELLS OR SHIPS
12 ELECTRONIC SMOKING DEVICES IN VIOLATION OF THIS SECTION OR CAUSES
13 ELECTRONIC SMOKING DEVICES TO BE SHIPPED IN VIOLATION OF THIS SECTION IS
14 GUILTY OF A FELONY AND ON CONVICTION, IS SUBJECT TO A FINE NOT EXCEEDING
15 \$50 FOR EACH ELECTRONIC SMOKING DEVICE TRANSPORTED OR IMPRISONMENT
16 NOT EXCEEDING 2 YEARS OR BOTH.

17 Article – Criminal Law

18 10-107.

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

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

23 (2) sent through the mail.

24 (b) (1) This subsection does not apply to the distribution of a tobacco product
25 or tobacco paraphernalia to[:

26 (i) an individual under the age of 21 years who is acting solely as
27 the agent of the individual's employer if the employer distributes tobacco products or
28 tobacco paraphernalia for commercial purposes[; or

29 (ii) a purchaser or recipient who:

30 1. is at least 18 years of age;

31 2. is an active duty member of the military; and

1 3. presents a valid military identification].

2 (2) A person who distributes tobacco products for commercial purposes,
3 including a person licensed under Title 16 of the Business Regulation Article, may not
4 distribute to an individual under the age of 21 years:

5 (i) a tobacco product;

6 (ii) tobacco paraphernalia; or

7 (iii) a coupon redeemable for a tobacco product.

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

9 (1) purchase for or sell a tobacco product to an individual under the age of
10 21 years[, unless the individual:

11 (i) is at least 18 years of age;

12 (ii) is an active duty member of the military; and

13 (iii) presents a valid military identification; or

14 (2) distribute tobacco paraphernalia to an individual under the age of 21
15 years, unless the individual:

16 (i) is at least 18 years of age;

17 (ii) is an active duty member of the military; and

18 (iii) presents a valid military identification].

19 (d) In a prosecution for a violation of this section, it is a defense that the defendant
20 examined the purchaser's or recipient's driver's license or other valid identification issued
21 by a government unit that positively identified the purchaser or recipient as at least 21
22 years of age [or as at least 18 years of age and an active duty member of the military].

23 (e) (1) A person who violates this section is guilty of a misdemeanor and on
24 conviction is subject to a fine not exceeding:

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

26 (ii) \$1,000 for a second violation occurring within 2 years after the
27 first violation; and

1 (iii) \$3,000 for each subsequent violation occurring within 2 years
2 after the preceding violation.

3 (2) Issuance of a civil citation for the sale of a tobacco product to an
4 individual under the age of 21 years precludes a prosecution for a violation of § 24–307 of
5 the Health – General Article arising out of the same violation.

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

8 **Article – Health – General**

9 24–305.

10 (a) This section does not apply to a tobacco product that is regulated under Title
11 16 of the Business Regulation Article.

12 (b) (1) Except as provided in paragraph (2) of this subsection, a person may
13 not sell, distribute, or offer for sale to an individual under the age of 21 years an electronic
14 smoking device, as defined in § 16.7–101(c) of the Business Regulation Article.

15 (2) This subsection does not apply to [:

16 (i) An] AN electronic smoking device that contains or delivers
17 nicotine intended for human consumption if the device has been approved by the United
18 States Food and Drug Administration for sale as a tobacco cessation product and is being
19 marketed and sold solely for this purpose[; or

20 (ii) A purchaser or recipient who:

21 1. Is at least 18 years of age;

22 2. Is an active duty member of the military; and

23 3. Presents a valid military identification].

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

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

27 (ii) \$1,000 for a second violation occurring within 24 months after
28 the first violation; and

29 (iii) \$3,000 for each subsequent violation occurring within 24 months
30 after the preceding violation.

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

3 (3) If a violation is committed by a person acting on behalf of a retailer, the
4 civil penalty imposed under paragraph (1) of this subsection shall be paid by the retailer.

5 (d) In a prosecution for a violation of this section, it is a defense that the defendant
6 examined the purchaser’s or recipient’s driver’s license or other valid identification issued
7 by a government unit that positively identified the purchaser or recipient as at least 21
8 years of age [or as at least 18 years of age and an active duty member of the military].

9 24–307.

10 (a) (1) This section does not apply to the distribution of a coupon that is
11 redeemable for a tobacco product if the coupon is:

12 (i) Contained in a newspaper, a magazine, or any other type of
13 publication in which the coupon is incidental to the primary purpose of the publication; or

14 (ii) Sent through the mail.

15 (2) This section does not apply to the distribution of a tobacco product or
16 tobacco paraphernalia to[:

17 (i) An] AN individual under the age of 21 years who is acting solely
18 as the agent of the individual’s employer if the employer distributes tobacco products or
19 tobacco paraphernalia for commercial purposes[; or

20 (ii) A purchaser or recipient who:

21 1. Is at least 18 years of age;

22 2. Is an active duty member of the military; and

23 3. Presents a valid military identification].

24 (b) A person who distributes tobacco products for commercial purposes, including
25 a person licensed under Title 16 of the Business Regulation Article, may not distribute to
26 an individual under the age of 21 years:

27 (1) A tobacco product;

28 (2) Tobacco paraphernalia; or

29 (3) A coupon redeemable for a tobacco product.

1 (c) A person may not:

2 (1) distribute a tobacco product to an individual under the age of 21 years,
3 unless[:

4 (i) the individual is acting solely as the agent of the individual's
5 employer who is engaged in the business of distributing tobacco products [; or

6 (ii) the individual:

7 1. is at least 18 years of age;

8 2. is an active duty member of the military; and

9 3. presents a valid military identification].

10 (2) distribute cigarette rolling papers to an individual under the age of 21
11 years[, unless the individual:

12 (i) is at least 18 years of age;

13 (ii) is an active duty member of the military; and

14 (iii) presents a valid military identification]; or

15 (3) distribute to an individual under the age of 21 years a coupon
16 redeemable for a tobacco product[, unless the individual:

17 (i) is at least 18 years of age;

18 (ii) is an active duty member of the military; and

19 (iii) presents a valid military identification].

20 (d) A person has not violated this section if:

21 (1) the person examined the driver's license or other valid
22 government-issued identification presented by the recipient of a tobacco product, cigarette
23 rolling paper, or coupon redeemable for a tobacco product; and

24 (2) the license or other identification positively identified the recipient as
25 being at least 21 years old [or as being at least 18 years of age and an active duty member
26 of the military].

HOUSE BILL 3

1 (e) (1) In Carroll County and St. Mary's County, a person who violates this
2 section commits a civil infraction and is subject to a civil penalty of:

3 (i) \$300 for the first violation; and

4 (ii) \$500 for any subsequent violation within 24 months after the
5 previous citation.

6 (2) In Cecil County, a person who violates this section commits a civil
7 infraction and is subject to a civil penalty of:

8 (i) \$300 for the first violation;

9 (ii) \$500 for a second violation; and

10 (iii) \$750 for any subsequent violation.

11 (3) In Garrett County, a person who violates this section commits a civil
12 infraction and is subject to a civil penalty not exceeding \$300.

13 SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
14 the application thereof to any person or circumstance is held invalid for any reason in a
15 court of competent jurisdiction, the invalidity does not affect other provisions or any other
16 application of this Act that can be given effect without the invalid provision or application,
17 and for this purpose the provisions of this Act are declared severable.

18 SECTION 3. AND BE IT FURTHER ENACTED, That:

19 (a) The General Assembly finds that:

20 (1) cartridge-based and closed electronic smoking devices present public
21 health concerns due to the increase in the usage of these products by Maryland's youth
22 population;

23 (2) data demonstrates that teen use of electronic smoking devices increased
24 by 70% between 2016 and 2018 and that Maryland's youth are introduced to electronic
25 smoking devices through closed and cartridge-based electronic smoking devices; and

26 (3) the use of electronic smoking devices puts Maryland's youth at risk of
27 developing a lifelong addiction to nicotine products, which can harm adolescent brain
28 development by negatively affecting the parts of the brain that control attention, mood,
29 learning, and impulse control.

30 (b) It is in the interest of the State and the intent of the General Assembly to
31 discourage the use of closed and cartridge-based electronic smoking devices without
32 depriving adult users of electronic smoking devices of access to open electronic smoking
33 device products as an alternative to combustible cigarettes.

1 SECTION ~~2.~~ 4. AND BE IT FURTHER ENACTED, That this Act ~~is an emergency~~
2 ~~measure, is necessary for the immediate preservation of the public health or safety, has~~
3 ~~been passed by a ye and nay vote supported by three fifths of all the members elected to~~
4 ~~each of the two Houses of the General Assembly, and shall take effect from the date it is~~
5 ~~enacted.~~ shall take effect January 1, 2021.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.