

Introduced \_\_\_\_\_  
Public Hearing \_\_\_\_\_  
Council Action \_\_\_\_\_  
Executive Action \_\_\_\_\_  
Effective Date \_\_\_\_\_

## County Council of Howard County, Maryland

2019 Legislative Session

Legislative Day No. **13**

### Bill No. 57 -2019

Introduced by: The Chairperson at the request of the County Executive

AN ACT amending the definition tobacco product to be consistent with State law; related to the distribution of tobacco products, prohibiting the distribution of tobacco products, including electronic smoking devices, to individuals under the age of 21 years; amending the enforcement provisions for unlawful distribution of tobacco products to an individual under the age of 21 years; providing for certain exceptions for individuals in the active military in accordance with State law; amending what constitutes acceptable proof of age; and generally related to the placement and distribution of tobacco products in Howard County.

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Introduced and read first time \_\_\_\_\_, 2019. Ordered posted and hearing scheduled.

By order \_\_\_\_\_  
Diane Schwartz Jones, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on \_\_\_\_\_, 2019.

By order \_\_\_\_\_  
Diane Schwartz Jones, Administrator

This Bill was read the third time on \_\_\_\_\_, 2019 and Passed \_\_\_\_, Passed with amendments \_\_\_\_\_, Failed \_\_\_\_\_.

By order \_\_\_\_\_  
Diane Schwartz Jones, Administrator

Sealed with the County Seal and presented to the County Executive for approval this \_\_\_ day of \_\_\_\_\_, 2019 at \_\_\_ a.m./p.m.

By order \_\_\_\_\_  
Diane Schwartz Jones, Administrator

Approved/Vetoed by the County Executive \_\_\_\_\_, 2019

\_\_\_\_\_  
Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment

1 **Section 1. Be It Enacted** by the County Council of Howard County, Maryland, that the Howard  
2 County Code is amended as follows:

3  
4 *By amending:*

5 *Title 12. Health and Social Services*

6 *Section 12.1200. Purpose.*

7 *Section 12.1201. Placement of Tobacco Product.*

8  
9 *By amending:*

10 *Title 12. Health and Social Services*

11 *Subtitle 13. Distribution of Tobacco Products to Minors.*

12  
13 *By amending:*

14 *Title 12. Health and Social Services.*

15 *Section 12.1401. Definitions.*

16  
17 **Title 12. Health and Social Services.**

18 **Subtitle 12. Placement of tobacco products.**

19  
20 **Section 12.1200. Purpose[.]; DEFINITIONS.**

21 (A) The Howard County Council finds and declares that tobacco products are a hazard to the  
22 health of the general public, especially youth, and that tobacco products should be made  
23 accessible at retail places only through the intervention of the retail seller or seller's employee.

24 (B) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED:

25 (1) *ELECTRONIC SMOKING DEVICE:*

26 (i) *ELECTRONIC SMOKING DEVICE* MEANS A DEVICE THAT CAN BE USED TO DELIVER  
27 AEROSOLIZED OR VAPORIZED NICOTINE TO AN INDIVIDUAL INHALING FROM THE DEVICE.

28 (ii) "ELECTRONIC SMOKING DEVICE" INCLUDES:

29 A. AN ELECTRONIC CIGARETTE, AN ELECTRONIC CIGAR, AN ELECTRONIC CIGARILLO,  
30 AN ELECTRONIC PIPE, AN ELECTRONIC HOOKAH, A VAPE PEN, AND VAPING LIQUID;  
31 AND

32 B. ANY COMPONENT, PART, OR ACCESSORY OF SUCH A DEVICE REGARDLESS OF  
33 WHETHER OR NOT IT IS SOLD SEPARATELY, INCLUDING ANY SUBSTANCE INTENDED  
34 TO BE AEROSOLIZED OR VAPORIZED DURING USE OF THE DEVICE.

1 (III) "ELECTRONIC SMOKING DEVICE" DOES NOT INCLUDE A DRUG, DEVICE, OR  
2 COMBINATION PRODUCT AUTHORIZED FOR SALE BY THE U.S. FOOD AND DRUG  
3 ADMINISTRATION UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

4 (2) *TOBACCO PRODUCT* SHALL HAVE THE MEANING SET FORTH IN SUBTITLE 1 OF TITLE 10 OF  
5 THE CRIMINAL LAW ARTICLE OF THE MARYLAND ANNOTATED CODE. AS INCLUDED IN  
6 SECTION 10-101 OF THE CRIMINAL LAW ARTICLE OF THE ANNOTATED CODE OF  
7 MARYLAND, A TOBACCO PRODUCT INCLUDES AN ELECTRONIC SMOKING DEVICE.

8  
9 **Section 12.1201. - Placement of tobacco products.**

10 (a) A retail seller of any tobacco product must not display or store the product in any place that  
11 is accessible to buyers of the product without the intervention of the seller or an employee of the  
12 seller.

13 [[(b) Tobacco product means any substance containing tobacco, including cigarettes, cigars,  
14 smoking tobacco, snuff or smokeless tobacco.]]

15 ([[c]]B) This section does not apply to:

- 16 (1) The sale of any tobacco product from a vending machine that complies with all  
17 requirements of State law; and  
18 (2) Any store where only or primarily tobacco products are sold.

19  
20 **Title 12. Health and Social Services.**

21 **Subtitle 13. Distribution of Tobacco Products to [[Minors]]**

22 **INDIVIDUALS UNDER THE AGE OF 21.**

23  
24 **Section 12.1300. Definitions.**

25 In this subtitle the following words have the meanings indicated:

26 (a) *Distribute* means to:

- 27 (1) Give away, sell, deliver, dispense, or issue;  
28 (2) Offer to give away, sell, deliver, dispense, or issue; or  
29 (3) Cause or hire any person to give away, sell, deliver, dispense, or issue or offer to give  
30 away, sell, deliver, dispense, or issue.

31 (b) *Employee* means an individual employed by an owner.

1 (C) ELECTRONIC SMOKING DEVICE.

2 (1) *ELECTRONIC SMOKING DEVICE* MEANS A DEVICE THAT CAN BE USED TO DELIVER  
3 AEROSOLIZED OR VAPORIZED NICOTINE TO AN INDIVIDUAL INHALING FROM THE DEVICE.

4 (2) “ELECTRONIC SMOKING DEVICE” INCLUDES:

5 (I) AN ELECTRONIC CIGARETTE, AN ELECTRONIC CIGAR, AN ELECTRONIC CIGARILLO, AN  
6 ELECTRONIC PIPE, AN ELECTRONIC HOOKAH, A VAPE PEN, AND VAPING LIQUID; AND

7 (II) ANY COMPONENT, PART, OR ACCESSORY OF SUCH A DEVICE REGARDLESS OF WHETHER  
8 OR NOT IT IS SOLD SEPARATELY, INCLUDING ANY SUBSTANCE INTENDED TO BE  
9 AEROSOLIZED OR VAPORIZED DURING USE OF THE DEVICE.

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

13 [[(c) *Minor* means an individual under the age of 18.]]

14 (d) *Owner* means a person engaged in the business of selling or otherwise distributing tobacco  
15 products for commercial purposes.

16 (e) *Tobacco product* [[means any substance containing tobacco, including cigarettes, cigars,  
17 smoking tobacco, snuff, or smokeless tobacco]] SHALL HAVE THE MEANING SET FORTH IN  
18 SUBTITLE 1 OF TITLE 10 OF THE CRIMINAL LAW ARTICLE OF THE MARYLAND ANNOTATED  
19 CODE. AS INCLUDED IN SECTION 10-101 OF THE CRIMINAL LAW ARTICLE OF THE  
20 ANNOTATED CODE OF MARYLAND, A TOBACCO PRODUCT INCLUDES AN ELECTRONIC  
21 SMOKING DEVICE.

22

23 **Section 12.1301. Unlawful distribution.**

24 (a) A person engaged in the business of selling or otherwise distributing tobacco products for  
25 commercial purposes shall not:

26 (1) Distribute any tobacco product to [[a minor]] AN INDIVIDUAL UNDER THE AGE OF 21  
27 YEARS, unless the [[minor]] INDIVIDUAL is acting solely as the agent of the  
28 [[minor's]] INDIVIDUAL’S employer who is engaged in the business of distributing tobacco  
29 products;

30 (2) Distribute cigarette rolling papers to [[a minor]] AN INDIVIDUAL UNDER THE AGE OF 21  
31 YEARS; or

1 (3) Distribute to [[a minor]]AN INDIVIDUAL UNDER THE AGE OF 21 YEARS a coupon  
2 redeemable for any tobacco product.

3 (b) A person, who is not a person described under subsection (a) of this section, shall not:

4 (1) Buy for or sell to [[a minor]]AN INDIVIDUAL UNDER THE AGE OF 21 YEARS any tobacco  
5 product; or

6 (2) Buy for or sell to [[a minor]]AN INDIVIDUAL UNDER THE AGE OF 21 YEARS cigarette rolling  
7 papers.

8 (C) IN ACCORDANCE WITH SECTION 10-107 OF THE CRIMINAL LAW ARTICLE OF THE ANNOTATED  
9 CODE OF MARYLAND, THE PROVISIONS OF SUBSECTION (A) AND (B) OF THIS SECTION DO NOT APPLY  
10 TO A PERSON WHO DISTRIBUTES TOBACCO PRODUCTS TO AN INDIVIDUAL UNDER 21 YEARS WHO IS:

11 (1) IS AT LEAST 18 YEARS OF AGE;

12 (2) IS AN ACTIVE DUTY MEMBER OF THE MILITARY; AND

13 (3) PRESENTS A VALID MILITARY IDENTIFICATION.

14 ([[c]]D) This section does not apply to the distribution of a coupon which is redeemable for any  
15 tobacco product when the coupon is contained in a newspaper, a magazine, or any other type of  
16 publication in which the coupon is incidental to the primary purpose of the publication, or sent  
17 through the mail.

18 ([[d]]E) A person has not violated this section if:

19 (1) The person examined a driver's license or another valid identification issued by [[an  
20 employer,]] a government entity[[, or an institution of higher learning]]; and

21 (2) The license or [[other]]VALID IDENTIFICATION ISSUED BY A GOVERNMENT ENTITY identified  
22 the buyer or recipient of a tobacco product as being at least [[18]]21 years old.

23 ([[e]]F) If [[a minor]]AN INDIVIDUAL UNDER THE AGE OF 21 YEARS bought a tobacco product  
24 from a vending machine, this section does not apply to the owner of the vending machine or any  
25 other person with control over the vending machine.

26  
27 **Section 12.1302. Enforcement and penalties.**

28 (a) This subtitle shall be enforced by the Health Officer.

29 (b) A person who believes that a violation of this subtitle has occurred may file a complaint with  
30 the Health Officer.

1 (c) [[A person]] AN OWNER AND/OR EMPLOYEE who violates subsection 12.1301(a) of this subtitle  
2 is subject to a civil penalty [[under title 24 of this Code, as follows]] NOT EXCEEDING:

3 (1) UP TO \$500 FOR A FIRST VIOLATION;

4 (2) UP TO \$1000 FOR A SECOND OR EACH SUBSEQUENT VIOLATION OCCURRING WITHIN 24  
5 MONTHS AFTER THE PRIOR VIOLATION.

6 [[(1) A violation by an owner is a Class B offense, and a subsequent violation within one  
7 year is a Class A offense;

8 (2) A violation by an employee is:

9 i. For the employee a Class D offense, and for a subsequent violation within one year a  
10 Class C offense; and

11 ii. For the owner a Class B offense, and for a subsequent violation within one year a  
12 Class A offense.]]

13 [[(d) A violation of subsection 12.1301(b) of this subtitle is a Class D offense.]]

14 ([[e]]D) For the purposes of this section, a subsequent violation means a separate and distinct  
15 action at a different time and occasion.

16  
17 **Title 12. Health and Social Services.**

18 **Subtitle 14. Distribution of Tobacco Products.**

19  
20 **Section 12.1401. Definitions.**

21 In this subtitle the following words have the meaning indicated:

22 (A) ELECTRONIC SMOKING DEVICE.

23 (1) *ELECTRONIC SMOKING DEVICE* MEANS A DEVICE THAT CAN BE USED TO DELIVER  
24 AEROSOLIZED OR VAPORIZED NICOTINE TO AN INDIVIDUAL INHALING FROM THE DEVICE

25 (2) “ELECTRONIC SMOKING DEVICE” INCLUDES:

26 (I) AN ELECTRONIC CIGARETTE, AN ELECTRONIC CIGAR, AN ELECTRONIC CIGARILLO, AN  
27 ELECTRONIC PIPE, AN ELECTRONIC HOOKAH, A VAPE PEN, AND VAPING LIQUID; AND

28 (II) ANY COMPONENT, PART, OR ACCESSORY OF SUCH A DEVICE REGARDLESS OF WHETHER  
29 OR NOT IT IS SOLD SEPARATELY, INCLUDING ANY SUBSTANCE INTENDED TO BE  
30 AEROSOLIZED OR VAPORIZED DURING USE OF THE DEVICE.

1 (3) "ELECTRONIC SMOKING DEVICE" DOES NOT INCLUDE A DRUG, DEVICE, OR COMBINATION  
2 PRODUCT AUTHORIZED FOR SALE BY THE U.S. FOOD AND DRUG ADMINISTRATION UNDER  
3 THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

4 ([[a]]B) *Tobacco product* [[means:

5 (1) Any substance containing tobacco, including cigarettes, cigars, smoking tobacco, snuff,  
6 or tobacco in any other form that may be chewed or held in the mouth or inhaled through  
7 the nostrils.

8 (2) Any tobacco or nicotine product that is now, or in the future, defined in]]SHALL HAVE THE  
9 MEANING SET FORTH IN subtitle 1 of title 10 of the Criminal Law Article of the Maryland  
10 Annotated Code and made illegal to distribute to [[a minor]] AN INDIVIDUAL UNDER THE  
11 21 YEARS IN SUBTITLE 13 OF THIS TITLE. AS INCLUDED IN SECTION 10-101 OF THE  
12 CRIMINAL LAW ARTICLE OF THE ANNOTATED CODE OF MARYLAND, A TOBACCO PRODUCT  
13 INCLUDES AN ELECTRONIC SMOKING DEVICE.

14 ([[b]]C) *Distribute* means to give, dispense, issue, deliver or offer to give dispense, deliver or  
15 issue; or to cause or hire any person to give, dispense, issue, deliver or offer to give, dispense,  
16 deliver or issue.

17  
18 ***Section 2. And Be It Further Enacted*** by the County Council of Howard County, Maryland that  
19 *this Act shall become effective 61 days after its enactment.*