

CITY OF BALTIMORE
COUNCIL BILL 18-0313
(First Reader)

Introduced by: Councilmembers Pinkett, Scott, Burnett, Bullock, Henry, Cohen, Clarke, Sneed
Introduced and read first time: December 6, 2018

Assigned to: Taxation, Finance and Economic Development Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Health Department, Environmental
Control Board, Baltimore Development Corporation

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Electronic Smoking Devices**

3 FOR the purpose of broadening the definition of smoking devices to encompass all electronic
4 smoking devices; regulating flavored e-liquids; creating specific sanitation standards for the
5 manufacture and sale of e-liquids; defining certain terms; imposing certain penalties; and
6 providing for special effective dates.

7 BY repealing and reordaining, with amendments

8 Article - Health

9 Sections 12-101, 12-107.3, and 12-403

10 Baltimore City Revised Code

11 (Edition 2000)

12 BY adding

13 Article - Health

14 Sections 12-901 through 12-905, inclusive, to be under the new subtitle,

15 “Subtitle 9. Flavored E-Liquids”

16 Baltimore City Revised Code

17 (Edition 2000)

18 BY adding

19 Article - Health

20 Sections 12-1001 and 12-1002, inclusive, to be under the new subtitle,

21 “Subtitle 10. Sanitation”

22 Baltimore City Revised Code

23 (Edition 2000)

24 BY repealing and reordaining, with amendments

25 Article 1- Mayor, City Council, and Municipal Agencies

26 Sections 40-14(e)(7)(Title 12), 40-14(e)(7)(Title 12),

27 and 41-14(6)(Title 12)

28 Baltimore City Code

29 (Edition 2000)

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the Laws of Baltimore City read as follows:

Baltimore City Revised Code

Article – Health

Title 12. Tobacco Products and Smoking Devices

Subtitle 1. Indoor Smoking

§ 12-101. Definitions.

(a) In general.

In this subtitle, the following terms have the meanings indicated.

(b) Electronic smoking device.

(1) In general.

["Electronic smoking device" means an electronic or battery-operated device that delivers vapors for inhalation, whether manufactured, distributed, marketed, or sold:]

[(i) as an electronic cigarette, electronic cigar, or electronic pipe; or]

[(ii) by any other product name or descriptor.]

"ELECTRONIC SMOKING DEVICE" MEANS ANY ELECTRONIC OR BATTERY-OPERATED PRODUCT THAT CONTAINS OR DELIVERS NICOTINE OR ANY OTHER SUBSTANCE INTENDED FOR HUMAN CONSUMPTION AND THAT CAN BE USED BY A PERSON IN ANY MANNER FOR THE PURPOSE OF INHALING VAPOR OR AEROSOL FROM THE PRODUCT, WHETHER MANUFACTURED, DISTRIBUTED, MARKETED, OR SOLD AS AN E-CIGARETTE, E-CIGAR, E-PIPE, E-HOOKAH, OR VAPE PEN, OR UNDER ANY OTHER PRODUCT NAME OR DESCRIPTOR.

(2) Exclusions.

"Electronic smoking device" does not include an asthma inhaler or similar product that:

(i) contains no tobacco nor any nicotine; and

(ii) has been specifically approved by the U.S. Food and Drug Administration for use in mitigating, treating, or preventing disease.

(c) Enclosed area.

(1) "Enclosed area" means an area that is bounded on all sides by walls that extend, with or without doors, windows, vents, or like openings, from floor to ceiling.

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(2) “Enclosed area” includes the interior of a vehicle.

(d) *Person in charge*.

“Person in charge” means the person who owns, operates, or manages a place subject to this subtitle.

(e) *Smoke*.

“Smoke” means to:

(1) inhale, burn, or carry any lighted cigarette, cigar, or pipe tobacco, or any other tobacco, weed, or plant product of any kind; or

(2) [to] inhale vapors from or otherwise allow vapors to be emitted from an electronic smoking device.

§ 12-107.3. Exceptions—Electronic smoking devices in video lottery facility.

This subtitle does not apply to the use of electronic smoking devices in a facility that has been awarded a Video Lottery Operation License by the Maryland Video Lottery FACILITY Location Commission under State Government Article, Title 9, Subtitle 1A.

Subtitle 4. Placement of Tobacco Products and Smoking Devices

§ 12-403. Placement requirements – Exceptions.

This subtitle does not apply to:

(1) the sale of tobacco products [or electronic smoking devices] from a vending machine that complies with all requirements of State Business Regulation Article, Title 16, Subtitle 3A; [or]

(2) an establishment that:

(i) sells tobacco products [or electronic smoking devices] exclusively or primarily; and

(ii) makes bona fide efforts to prevent minors from entering the establishment; OR

(3) A VAPE SHOP VENDOR, AS DEFINED IN STATE BUSINESS REGULATION ARTICLE, TITLE 16.7, SUBTITLE 1, WHO MAKES BONA FIDE EFFORTS TO PREVENT MINORS FROM ENTERING THE ESTABLISHMENT.

SUBTITLE 9. FLAVORED E-LIQUIDS

§ 12-901. DEFINITIONS.

(A) *IN GENERAL*.

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IN THIS SUBTITLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

(B) *CHARACTERIZING FLAVOR.*

(1) *IN GENERAL.*

“CHARACTERIZING FLAVOR” MEANS A DISTINGUISHABLE TASTE OR AROMA, INCLUDING TASTES OR AROMAS RELATING TO ANY FRUIT, CHOCOLATE, VANILLA, HONEY, CANDY, COCOA, DESSERT, ALCOHOLIC BEVERAGE, HERB, OR SPICE AND CONCEPTS SUCH AS SPICY, ARCTIC, ICE, COOL, WARM, HOT, MELLOW, FRESH, AND BREEZE, BUT NOT INCLUDING TOBACCO.

(2) *ADDITIVES, FLAVORINGS, OR INGREDIENT INFORMATION.*

NO PRODUCT MAY BE DETERMINED TO HAVE A CHARACTERIZING FLAVOR SOLELY BECAUSE OF THE USE OF ADDITIVES OR FLAVORINGS OR THE PROVISION OF INGREDIENT INFORMATION.

(C) *DISTRIBUTE.*

“DISTRIBUTE” MEANS TO:

- (1) SELL, DELIVER, DISPENSE, ISSUE, TRANSFER, OR OTHERWISE DISTRIBUTE;
- (2) OFFER TO SELL, DELIVER, DISPENSE, ISSUE, TRANSFER, OR OTHERWISE DISTRIBUTE;
OR
- (3) CAUSE OR HIRE ANY PERSON TO:
 - (I) SELL, DELIVER, DISPENSE, ISSUE, TRANSFER, OR OTHERWISE DISTRIBUTE; OR
 - (II) OFFER TO SELL, DELIVER, DISPENSE, ISSUE, TRANSFER, OR OTHERWISE DISTRIBUTE.

(D) *ELECTRONIC SMOKING DEVICE.*

“ELECTRONIC SMOKING DEVICE” HAS THE MEANING STATED IN § 12-101 {“DEFINITIONS”} OF THIS TITLE.

(E) *FLAVORED E-LIQUID.*

“FLAVORED E-LIQUID” MEANS A LIQUID COMPOSED OF NICOTINE AND OTHER INGREDIENTS SOLD AS A PRODUCT THAT:

- (1) CAN BE USED IN AN ELECTRONIC SMOKING DEVICE; AND
- (2) CONTAINS A NATURAL OR ARTIFICIAL CONSTITUENT OR ADDITIVE THAT CAUSES E-LIQUIDS OR THEIR VAPOR TO HAVE A CHARACTERIZING FLAVOR.

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§ 12-902. DISTRIBUTION PROHIBITED.

NO PERSON MAY DISTRIBUTE ANY FLAVORED E-LIQUID OR ELECTRONIC SMOKING DEVICE CONTAINING FLAVORED E-LIQUID TO ANY OTHER PERSON.

§§ 12-903 TO 12-904. {RESERVED}

§ 12-905. ENFORCEMENT BY CITATION.

(A) IN GENERAL.

IN ADDITION TO ANY OTHER CIVIL OR CRIMINAL REMEDY OR ENFORCEMENT PROCEDURE, THIS SUBTITLE MAY BE ENFORCED BY ISSUANCE OF:

(1) AN ENVIRONMENTAL CITATION AS AUTHORIZED BY THE CITY CODE ARTICLE 1, SUBTITLE 40 {"ENVIRONMENTAL CONTROL BOARD"}; OR

(2) A CIVIL CITATION AS AUTHORIZED BY THE CITY CODE ARTICLE 1, SUBTITLE 41 {"CIVIL CITATIONS"}.

(B) PROCESS NOT EXCLUSIVE.

THE ISSUANCE OF A CITATION TO ENFORCE THIS SUBTITLE DOES NOT PRECLUDE PURSUING ANY OTHER CIVIL OR CRIMINAL REMEDY OR ENFORCEMENT ACTION AUTHORIZED BY LAW.

(C) EACH PACKAGE OR CONTAINER A SEPARATE OFFENSE.

EACH PACKAGE OR CONTAINER OF E-LIQUIDS THAT IS DISTRIBUTED OR INTENDED FOR DISTRIBUTION IN VIOLATION OF THIS SUBTITLE IS A SEPARATE OFFENSE.

§ 12-906. CRIMINAL PENALTIES: \$500.

(A) IN GENERAL.

ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND, ON CONVICTION, IS SUBJECT TO A FINE OF NOT MORE THAN \$500 FOR EACH OFFENSE.

(B) EACH PACKAGE OR CONTAINER A SEPARATE OFFENSE.

EACH PACKAGE OR CONTAINER OF E-LIQUIDS THAT IS DISTRIBUTED OR INTENDED FOR DISTRIBUTION IN VIOLATION OF THIS TITLE IS A SEPARATE OFFENSE.

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SUBTITLE 10. SANITATION

§ 12-1001. SCOPE OF SUBTITLE.

THIS SUBTITLE APPLIES TO MANUFACTURERS OF ELECTRONIC SMOKING DEVICES, AS DEFINED IN § 12-101 {"DEFINITIONS"} OF THIS TITLE, AND VAPE SHOP VENDORS, AS DEFINED IN STATE BUSINESS REGULATION ARTICLE, TITLE 16.7, SUBTITLE 1.

§ 12-1002. SANITARY OPERATIONS.

(A) GENERAL MAINTENANCE.

(1) BUILDINGS, FIXTURES, AND OTHER PHYSICAL FACILITIES MUST BE MAINTAINED IN A SANITARY CONDITION AND MUST BE KEPT IN REPAIR SUFFICIENT TO PREVENT E-LIQUIDS FROM BECOMING ADULTERATED.

(2) CLEANING AND SANITIZING OF UTENSILS AND EQUIPMENT MUST BE CONDUCTED IN A MANNER THAT PROTECTS AGAINST CONTAMINATION OF E-LIQUID, CONTACT SURFACES, OR PACKAGING MATERIALS.

(B) SUBSTANCES USED IN CLEANING AND SANITIZING; STORAGE OF TOXIC MATERIALS.

(1) CLEANING COMPOUNDS AND SANITIZING AGENTS USED IN CLEANING AND SANITIZING PROCEDURES MUST BE FREE FROM UNDESIRABLE MICROORGANISMS AND MUST BE SAFE AND ADEQUATE UNDER THE CONDITIONS OF USE.

(2) ONLY THE FOLLOWING TOXIC MATERIALS MAY BE USED OR STORED IN A LOCATION WHERE E-LIQUID IS EXPOSED:

(I) THOSE REQUIRED TO MAINTAIN CLEAN AND SANITARY CONDITIONS;

(II) THOSE NECESSARY FOR USE IN LABORATORY TESTING PROCEDURES;

(III) THOSE NECESSARY FOR BUILDING AND EQUIPMENT MAINTENANCE AND OPERATION; AND

(IV) THOSE NECESSARY FOR OPERATIONS.

(3) TOXIC CLEANING COMPOUNDS, SANITIZING AGENTS, AND PESTICIDE CHEMICALS MUST BE IDENTIFIED, HELD, AND STORED IN A MANNER THAT PROTECTS AGAINST CONTAMINATION OF E-LIQUID, CONTACT SURFACES, OR PACKAGING MATERIALS.

(C) HYGIENE.

(1) AN EMPLOYEE MUST CONFORM TO SANITARY PRACTICES WHILE ON DUTY, INCLUDING:

(I) MAINTENANCE OF PERSONAL HYGIENE, AND

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(II) THOROUGH HAND-WASHING IN AN ADEQUATE AREA BEFORE THE START OF WORK AND AT ANY OTHER TIME WHEN HANDS MAY HAVE BECOME SOILED OR CONTAMINATED.

(2) EMPLOYEES AND VISITORS MUST BE PROVIDED WITH ADEQUATE AND CONVENIENT HAND-WASHING FACILITIES FURNISHED WITH RUNNING WATER AT A TEMPERATURE SUITABLE FOR SANITIZING HANDS.

(I) HAND-WASHING FACILITIES MUST BE LOCATED WHERE GOOD SANITARY PRACTICES REQUIRE EMPLOYEES TO WASH AND SANITIZE THEIR HANDS.

(II) EFFECTIVE NONTOXIC SANITIZING CLEANERS AND SANITARY TOWEL SERVICE OR SUITABLE HAND DRYERS MUST BE PROVIDED.

§ 12-1003. ENFORCEMENT BY CITATION.

(A) *IN GENERAL.*

IN ADDITION TO ANY OTHER CIVIL OR CRIMINAL REMEDY OR ENFORCEMENT PROCEDURE, THIS SUBTITLE MAY BE ENFORCED BY ISSUANCE OF:

(1) AN ENVIRONMENTAL CITATION AS AUTHORIZED BY THE CITY CODE ARTICLE 1, SUBTITLE 40 {"ENVIRONMENTAL CONTROL BOARD"}; OR

(2) A CIVIL CITATION AS AUTHORIZED BY THE CITY CODE ARTICLE 1, SUBTITLE 41 {"CIVIL CITATIONS"}.

(B) *PROCESS NOT EXCLUSIVE.*

THE ISSUANCE OF A CITATION TO ENFORCE THIS SUBTITLE DOES NOT PRECLUDE PURSUING ANY OTHER CIVIL OR CRIMINAL REMEDY OR ENFORCEMENT ACTION AUTHORIZED BY LAW.

(C) *EACH DAY A SEPARATE OFFENSE.*

EACH DAY THAT A VIOLATION CONTINUES IS A SEPARATE OFFENSE.

§ 12-1004. CIVIL PENALTIES: \$500.

(A) *IN GENERAL.*

ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS SUBJECT TO A CIVIL FINE OF NOT MORE THAN \$500 FOR EACH OFFENSE.

(B) *EACH DAY A SEPARATE OFFENSE.*

EACH DAY THAT A VIOLATION CONTINUES IS A SEPARATE OFFENSE.

Baltimore City Code

Article 1. Mayor, City Council, and Municipal Agencies

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Subtitle 40. Environmental Control Board

§ 40-14. Violations to which subtitle applies.

(e) *Provisions and penalties enumerated.*

(7) Health Code

Title 12: Tobacco Products and Smoking Devices

Subtitle 1: Indoor Smoking

Person smoking \$500

Employer, other person in charge \$750

Subtitle 2: Sale of Unpackaged Cigarettes \$500

Subtitle 4: Placement of Tobacco Products and Smoking
Devices \$500

Subtitle 5: Distribution to Minors \$500

Subtitle 6: Flavored Tobacco Wrappings \$500

Subtitle 7: Mobile Vendors \$500

Subtitle 8: Smoking Near Playgrounds \$500

SUBTITLE 9: FLAVORED E-LIQUID \$500

SUBTITLE 10: SANITATION \$500

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Subtitle 41. Civil Citations

§ 41-14. Offenses to which subtitle applies – Listing.

(6) *Health Code*

Title 12: Tobacco Products and Smoking Devices

Subtitle 1: Indoor Smoking

Person smoking \$500

Employer, other person in charge \$750

Subtitle 2: Sale of Unpackaged Cigarettes \$500

Subtitle 4: Placement of Tobacco Products and
Smoking Devices \$500

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Subtitle 5: Distribution to Minors	\$500
Subtitle 6: Flavored Tobacco Wrappings	\$500
Subtitle 7: Mobile Vendors	\$500
Subtitle 8: Smoking Near Playgrounds	\$500
SUBTITLE 9: FLAVORED E-LIQUID	\$500
SUBTITLE 10: SANITATION	\$500

SECTION 2. AND BE IT FURTHER ORDAINED, That the catchlines contained in the Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect as follows:

- (i) Health Article §§ 12-101, 12-107, and 12-403, as amended by this Ordinance, take effect on the 30th day after the enactment of this Ordinance;
- (ii) Health Article Title 12, Subtitle 10, as added by this Ordinance, and the cross-reference to Subtitle 10 in Article 1, §§ 40-14(e)(7) and 41-14(6), as amended by this Ordinance, take effect on the 90th day after the enactment of this Ordinance; and
- (iii) Health Article Title 12, Subtitle 9, as added by this Ordinance, and the cross reference to Subtitle 9 in Article 1, §§ 40-14(e)(7) and 41-14(6), as amended by this Ordinance, take effect on the 180th day after the enactment of this Ordinance.