

Bill No. 56-14
Concerning: Health and Sanitation -
Smoking - Electronic Cigarettes
Revised: 1/29/2015 Draft No. 5
Introduced: November 25, 2014
Enacted: March 3, 2015
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Floreen, Council Vice President Leventhal, and
Councilmembers Branson, Navarro, Rice, Elrich, Riemer, Katz, Hucker and Berliner

AN ACT to:

- (1) prohibit the use of electronic cigarettes in certain public places;
- (2) restrict the sale of certain liquid nicotine or liquid nicotine containers in retail outlets unless the nicotine is in a container considered child resistant packaging;
- (3) restrict the accessibility of certain tobacco products in retail settings, and require retail sellers of those products to take certain actions;
- (4) prohibit the use of electronic cigarettes by minors; and
- (5) generally amend County law regarding smoking, electronic cigarettes, and health and sanitation.

By amending

Montgomery County Code
Chapter 24, Health and Sanitation
Section 24-9

By adding

Chapter 24, Health and Sanitation
Sections 24-13 and 24-14

By renumbering

Chapter 24, Health and Sanitation
Sections 24-2, 24-3, 24-4, 24-5, 24-6, 24-7, 24-8, 24-9B, 24-9C, 24-9D, 24-10, 24-11,
24-11A

By repealing

Chapter 24, Health and Sanitation
Section 24-9A

By renaming

Chapter 24, Health and Sanitation
Article II

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 24-2, 24-3, 24-4, 24-5, 24-6, 24-7, 24-8, 24-10, 24-11, and**
2 **24-11A are renumbered as follows:**

3 **24-2, 24-3. [Reserved.]**

4 **24-[4]2. Communicable diseases generally — Warning signs.**

5 * * *

6 **24-[5]3. [Same] Communicable diseases — Unauthorized removal of**
7 **warning signs.**

8 * * *

9 **24-[6]4. [Same] Communicable diseases — Control in food establishments.**

10 * * *

11 **24-[7]5. Use of certain shoe-fitting devices or machines prohibited.**

12 * * *

13 **24-[8]6. Commitment of chronic alcoholics.**

14 * * *

15 **24-[10]7. Catastrophic health insurance plan.**

16 * * *

17 **24-[11]8. Massage.**

18 * * *

19 **24-[11A]8A. Fitness centers — defibrillators.**

20 * * *

21 **Sec. 2. Article II is renamed; Section 24-9 is amended; Section 24-9A is**
22 **repealed; Sections 24-9B, 24-9C, and 24-9D are renumbered; and Section**
23 **24-13 is added as follows:**

24 **Article II. [Reserved] Smoking, Tobacco, and Nicotine.**

25 **24-9. Smoking and using electronic cigarettes in public places.**

26 (a) **Definitions.** In this [Section] Article, the following words and phrases
27 have the meanings indicated:

28 * * *

Electronic cigarette means [[an electronic device that delivers vapor for inhalation, including any refill, cartridge, or any other component of an electronic cigarette. Electronic cigarette does not include any product approved by the Food and Drug Administration for sale as a drug or medical device.]] any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, 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.

* * *

Smoking or smoke means the act of lighting, smoking, or carrying a lighted or smoldering cigar, cigarette, or pipe, of any kind.

* * *

Vape shop means any store that primarily sells electronic cigarettes. Vape shop does not include an area of a larger store in which electronic cigarettes are sold.

Vaping or vape means the act of using an electronic cigarette.

(b) Smoking and [[using an electronic cigarette]] vaping are prohibited in certain public places. A person must not smoke or use any electronic cigarette in or on any:

* * *

(c) Exceptions. Smoking or [[using an electronic cigarette]] vaping is not prohibited by this Section:

(1) In a tobacco shop or a vape shop;

* * *

(3) When smoking or [[using an electronic cigarette]] vaping is necessary to the conduct of scientific research into the health effects of tobacco smoke and is conducted at an analytical or educational laboratory;

* * *

(d) Notwithstanding paragraph (b)(11), the Director of the Department of Health and Human Services may designate an outside area on property that is owned or leased by the County where smoking or [[using an electronic cigarette]] vaping is allowed if the Director finds that a complete prohibition on that property would impede a program’s mission or effective delivery of services.

(e) *Posting signs.*

(1) Except as provided in paragraph (e)(4), signs prohibiting or permitting smoking or [[using an electronic cigarette]] vaping, as the case may be, must be posted conspicuously at each entrance to a public place covered by this Section.

(2) Where smoking or [[using an electronic cigarette]] vaping is prohibited by this Section, the sign either must read “No smoking or [[using an electronic cigarette]] vaping by order of Montgomery County Code § 24-9. Enforced by (department designated by the County Executive)” or be a performance-oriented sign such as “No Smoking or [[Using an Electronic Cigarette]] Vaping” or “This is a Smoke Free Establishment.” The international no-smoking symbol may replace the words “No smoking.”

* * *

82 (f) *Duty to prevent smoking in certain areas.* The owner or person in
83 control of a building or area covered by this Section must refuse to
84 serve or seat any person who smokes or vapes where smoking or
85 [[using an electronic cigarette]] vaping is prohibited, and must ask the
86 person to leave the building or area if the person continues to smoke
87 or vape after proper warning.

88 * * *

89 (k) *Enforcement and penalties.*

90 (1) Any violation of this [Section] Article is a class C civil
91 violation. Each day a violation exists is a separate offense.

92 (2) The County Attorney or any affected party may file an action in
93 a court with jurisdiction to enjoin repeated violations of the
94 Section.

95 (3) The County Executive must designate by Executive order one
96 or more County departments or agencies to enforce this Article.

97 (4) The Director of the Department of Health and Human Services
98 may suspend a license issued under Chapter 15 for up to 3 days
99 if the Director finds, under the procedures of Section 15-16,
100 that the operator of an eating and drinking establishment has
101 knowingly and repeatedly violated any provision of this
102 Section.

103 **[24-9A. Reserved.]**

104 **24-[9B]10. Availability of tobacco products to minors.**

105 * * *

106 **24-[9C]11. Distribution of tobacco products to minors.**

107 * * *

108 **24-[9D]12. Tobacco and electronic cigarette [Products – Placement] products**
 109 **= placement.**

110 (a) Placement. A retail seller of any tobacco or electronic cigarette
 111 product must not display or store the product in any place that is
 112 accessible to buyers of the product without the intervention of the
 113 seller or an employee of the seller.

114 (b) Definitions. *Tobacco product* means any substance containing
 115 tobacco, including cigarette, cigars, smoking tobacco, snuff, or
 116 smokeless tobacco.

117 (c) Applicability. This Section does not apply to:

118 (1) the sale of any tobacco or electronic cigarette product from a
 119 vending machine that complies with all requirements of state
 120 law; and

121 (2) any store where only or primarily tobacco or electronic
 122 cigarette products are sold.

123 [(d) Enforcement. The County Executive must designate by Executive
 124 order one or more County departments or agencies to enforce this
 125 Section.]

126 [24-12 – 24-21. Reserved.]

127 **24-13. Use of electronic cigarettes by minors prohibited.**

128 A person under 18 years old must not use an electronic cigarette.

129 **24-14. Child Resistant Packaging of Liquid Nicotine Container Required.**

130 (a) Definitions. In this Section, the following words have the meanings
 131 indicated:

132 Child resistant packaging means packaging that is:

133 (1) designed or constructed to be significantly difficult for children
 134 under 5 years of age to open or obtain a toxic or harmful

135 amount of the substance contained therein within a reasonable
 136 time; [[and]]
 137 (2) not difficult for normal adults to use properly; and
 138 (3) tested in accordance with the method described in Code of
 139 Federal Regulations, Title 16, Section 1700.20, as in effect on
 140 March 3, 2015.

141 Child resistant packaging does not mean packaging which all such
 142 children cannot open or obtain a toxic or harmful amount within a
 143 reasonable time.

144 Liquid nicotine container means a container that is used to hold liquid
 145 containing nicotine in any concentration.

146 (b) Child resistant packaging required. A retail seller of any liquid
 147 nicotine or liquid nicotine container must not sell, resell, distribute,
 148 dispense, or give away:

149 (1) any liquid or gel substance containing nicotine unless the
 150 substance is in child resistant packaging; or

151 (2) any nicotine liquid container unless the container constitutes
 152 child resistant packaging.

153 (c) Exceptions. This Section does not apply to a liquid nicotine container
 154 that is sold, marketed, or intended for use in an electronic cigarette if
 155 the container is prefilled and sealed by the manufacturer and not
 156 intended to be opened by the consumer.

157 24-15 – 24-21. Reserved.

158

159 *Approved:*

160

161

George Leventhal

3/6/2015

162 George Leventhal, President, County Council

Date

163 *Approved:*

164

165

166 Isiah Leggett, County Executive

Date

167 *This is a correct copy of Council action.*

168

169

170 Linda M. Lauer, Clerk of the Council

Date