

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 321

(Delegate Rosenberg, *et al.*)

Health and Government Operations

Finance

Cigarette Restitution Fund - Payments for Sale and Marketing of Electronic
Smoking Devices - Use

This bill requires the Cigarette Restitution Fund (CRF) to include a separate account consisting of payments received by the State from any judgment, settlement, penalty, offer of compromise, or any other enforcement action related to the sale and marketing of electronic smoking devices (ESDs). Distributions from the separate account may be used, consistent with any other provision of State law, to supplement general fund appropriations for specified programs that aim to reduce the use of tobacco products by individuals younger than age 21.

Fiscal Summary

State Effect: Because the bill does not directly affect the total amount of funds available to Maryland from any judgment, settlement, penalty, offer of compromise, or any other enforcement action, it is not anticipated to significantly affect overall State finances, but may redirect future spending, as discussed below. Any additional costs to administer an additional account can be handled with existing budgeted resources.

Local Effect: The bill is not anticipated to directly affect local government operations or finances.

Small Business Effect: None.

Analysis

Current Law: An “ESD” is a device that can be used to deliver aerosolized or vaporized nicotine to an individual inhaling from the device. “ESD” includes (1) an electronic

cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen and vaping liquid and (2) any component, part, or accessory of such a device regardless of whether or not it is sold separately, including any substance intended to be aerosolized or vaporized during use of the device. “ESD” excludes a drug, device, or combination product authorized for sale by the U.S. Food and Drug Administration under the Food, Drug, and Cosmetic Act or a battery or battery charger when sold separately.

Chapters 172 and 173 of 1999 established CRF, which is supported by payments made under the Master Settlement Agreement (MSA). Through the MSA, settling tobacco manufacturers pay the litigating parties – 46 states, 5 territories, and the District of Columbia – substantial annual payments in perpetuity. The distribution of MSA funds among the states is determined by formula; as of April 2022, Maryland has received over [\\$3.3 billion](#) since 1999.

The use of CRF funds is restricted by statute. The Governor must include appropriations from CRF in the annual budget bill equivalent to the lesser of \$100.0 million or 90% of the funds estimated to be available to CRF in the fiscal year for which the appropriations are made. At least 30% of the appropriations must be made to Medicaid. At least 50% of the appropriations must be dedicated to the Tobacco Use Prevention and Cessation Program; the Cancer Prevention, Education, Screening, and Treatment Program; specified activities of the Southern Maryland Agricultural Development Commission; and other programs that serve the following purposes:

- reduction of the use of tobacco products by individuals younger than age 21;
- implementation of the Southern Maryland Regional Strategy-Action Plan for Agriculture with an emphasis on alternative crop uses for agricultural land now used for growing tobacco;
- public and school education campaigns to decrease tobacco use with initial emphases on areas targeted by tobacco manufacturers in marketing and promoting cigarette and tobacco products;
- smoking cessation programs;
- enforcement of laws regarding tobacco sales;
- the Maryland Health Care Foundation;
- primary health care in rural areas of the State and areas targeted by tobacco manufacturers in marketing and promoting their products;
- prevention, treatment, and research concerning specified diseases, tobacco product use, and tobacco control, including operating costs and related capital projects;
- substance abuse treatment and prevention programs; and
- any other public purpose.

For each fiscal year for which appropriations are made, 0.15% of CRF must be appropriated for the purposes of enforcement of Title 16, Subtitle 5 of the Business Regulation Article (which governs escrow requirements for nonparticipating tobacco product manufacturers). Any additional appropriations from CRF may be made for any lawful purpose.

State Fiscal Effect: The bill directs payments received by the State from any judgment, settlement, penalty, offer of compromise, or other enforcement action related to the sale and marketing of ESDs to a new account within CRF. The bill does not affect the amount or timing of any special fund revenues that may be received; rather, it redirects such revenues to a separate account and specifies how they may be used.

According to a December 2022 [press release](#) from the Office of the Attorney General (OAG), JUUL Labs and 33 states and territories (including Maryland) announced an agreement of more than \$434.5 million that resolves investigation into the manufacturer's marketing and sales practices directed toward youth. The settlement will be paid out over a period of five to nine years. Maryland is expected to receive at least \$13.0 million from the settlement. However, the exact amount and payment schedule for the State remains to be determined.

While the bill does not impact revenues received by the State, it does impact how such revenues will be distributed and the purpose for which they may be appropriated. Presently, any payments received by the State from any judgment, settlement, penalty, offer of compromise, or any other enforcement action related to the sale and marketing of ESDs accrue to CRF and are subject to the distribution provisions outlined in statute, which include a requirement that 30% of annual appropriations from CRF be made to Medicaid, 50% to various specified programs, and 0.15% for enforcement of escrow requirements for nonparticipating tobacco product manufacturers. Under the bill, any such funds must be placed in a separate account and consistent with any other provision of State law, the funds may be used to supplement general fund spending on programs aimed at reducing the use of tobacco products by individuals younger than age 21.

While the bill does not specify which programs aimed at reducing youth tobacco use may receive funding under the bill, the Maryland Department of Health (MDH) advises that it is statutorily responsible for developing and implementing strategies to prevent persons younger than age 21 from accessing and using tobacco products. Thus, MDH anticipates that it will be allocated funds from the account. Assuming that funds are allocated to MDH, MDH advises that it would need to employ additional staff to manage and implement the funding. Any special fund revenues would cover special fund expenditures.

As noted above, Maryland is expected to receive \$13.0 million over five to nine years from the JUUL Labs settlement. Given the bill's effective date and the timing of the budget

process, any payments received from the settlement in the near term would likely not be subject to the required distribution until the fiscal 2025 budget. Accordingly, funding for programs within MDH (and/or another entity that targets underage use) likely increases, while funding available for other programs likely decreases beginning in fiscal 2025 until the payments under the settlement expire.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Office of the Attorney General; Comptroller's Office; Department of Budget and Management; Maryland Department of Health; Department of Legislative Services

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