

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 1056
 Finance

(Senator Kramer)

Economic Matters

Cigarettes, Other Tobacco Products, and Electronic Smoking Devices - Revisions
(Tobacco Retail Modernization Act of 2024)

This bill makes various changes regarding how cigarettes, electronic smoking devices (ESD), and other tobacco products (OTP) may be sold in the State and alters related enforcement provisions. Generally, cigarettes, ESD, and OTP may not be displayed at retail unless the products are located behind a counter. The bill also (1) increases fees for specified licenses; (2) imposes additional requirements related to the display of tobacco products, ESD, and OTP; (3) requires the Maryland Department of Health (MDH) or its designee to conduct at least one unannounced inspection of certain license holders annually; (4) expands the grounds by which civil citations may be issued related to the display of ESD or tobacco products and the sale of such without age verification; (5) increases the criminal penalties associated with the sale of tobacco products to minors; (6) repeals various provisions that authorize the sale of cigarettes, ESD, or OTP to a person who is at least age 18 and an active-duty member of the military; and (7) requires the Alcohol, Tobacco, and Cannabis Commission (ATCC), in conjunction with specified entities, to submit a specified report by October 1, 2025.

Fiscal Summary

State Effect: Special fund revenues and expenditures increase by \$1.2 million in FY 2025 and \$1.6 million annually thereafter due to higher license fees for enforcement, including grants to local health departments (LHDs). General fund revenues may increase by \$24,000 in FY 2025 and \$32,000 annually thereafter from higher fines, possibly offset by lower tax revenues if less ESD is sold. General fund expenditures increase by \$44,800 in FY 2025.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
GF Revenue	\$24,000	\$32,000	\$32,000	\$32,000	\$32,000
SF Revenue	\$1,187,600	\$1,583,500	\$1,583,500	\$1,583,500	\$1,583,500
GF Expenditure	\$44,800	\$0	\$0	\$0	\$0
SF Expenditure	\$1,187,600	\$1,583,500	\$1,583,500	\$1,583,500	\$1,583,500
Net Effect	(\$20,800)	\$32,000	\$32,000	\$32,000	\$32,000

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Montgomery County revenues increase from certain license fees; in all other counties, LHD revenues also increase, but from grants provided by MDH due to license fees distributed to MDH, as discussed below. LHD expenditures may increase to the extent additional staff is required to monitor and enforce the bill’s provisions; in counties other than Montgomery County, such costs are likely covered by the MDH grants. Civil fine revenues may increase, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law:

Definitions

The bill alters definitions in a manner that alters the way ESD may be sold to consumers in Maryland by vape shop vendors. Further, vape shop vendors are limited to selling ESD and related accessories.

ESD Manufacturer: Under the bill, “ESD manufacturer” means a person that (1) manufactures, mixes, or otherwise produces ESD intended for sale in the State, including ESD intended for sale in the United States through an importer and (2) sells ESD to a consumer through mail order, online, telephone, or other electronic purchases. Further, if the ESD manufacturer also holds an ESD retailer or vape shop vendor license, it means a person that sells ESD *in the same manner as a vape shop vendor* to consumers located in the State or, unless otherwise prohibited or restricted under law, distributes sample ESD to a licensed ESD retailer or vape shop vendor.

ESD Retailer and Vape Shop Vendor: Under current law, an “ESD retailer” means a person that sells ESD to consumers, holds ESD for sale to consumers, or distributes sample ESD to consumers. “Vape shop vendor” means an ESD business that derives at least 70% of its revenues, measured by average daily receipts, from the sale of ESD and related accessories. The bill alters the definition of “vape shop vendor” to mean an ESD business that sells ESD and related accessories *to consumers on the premises of its place of business*.

Cigarette, Other Tobacco Products, ESD, and Vape Shop Vendor License – Authorizations

Under current law, any person with a specified cigarette or OTP license (or an affiliate) is authorized to manufacture, distribute, or sell ESD in the same capacity as an ESD licensee and may not be required to obtain an additional license. The bill does not change this authorization.

However, the bill specifies that a licensed vape shop vendor is authorized to sell ESDs *to consumers on the premises of the licensee's place of business* and, if the vape shop vendor licensee also holds a license to act as an ESD manufacturer, sell at retail *on the vape shop vendor premises* ESD manufactured under the manufacturer license.

License Fees – Increases

The bill increases the fee for each county cigarette retail license from \$25 in a county other than Cecil or Montgomery, \$50 in Cecil County, and \$125 in Montgomery County to \$300 in all counties. From the license fee, the clerk of the court must distribute \$25 to ATCC (as under current law) and \$275 to Montgomery County (if the license was issued in Montgomery County) or to MDH (for licenses issues in all other counties) to be used to enforce existing laws prohibiting the sale or distribution of tobacco, tobacco products, or ESD to individuals younger than 21.

The bill also increases the fee for each ESD retailer license and vape shop vendor license from \$25 to \$300. From each license fee, the clerk of the court must distribute \$25 to ATCC and \$275 to MDH to be used by MDH or its designee to enforce existing laws prohibiting the sale or distribution of tobacco, tobacco products, or ESD to individuals younger than 21. These funds may not supplant existing funding for such enforcement.

Display of Products for Sale – Exceptions

The prohibition against displaying OTP for sale unless the OTP are located behind the counter in an area accessible only to the retailer and its employees does not apply to a licensed tobacconist or the sale of premium cigars.

The prohibition against displaying ESD for sale unless the ESD are located behind the counter in an area accessible only to a person or employees of the person does not apply to an ESD that has been approved by the U.S. Food and Drug Administration for sale as a tobacco cessation product.

Inspections

Under current law, MDH may conduct unannounced inspections of licensed retailers to ensure compliance with underage sales and other provisions of law.

The bill requires MDH or its designee to conduct at least one such unannounced inspection each year and clarifies that vape shop vendors must also be inspected. If a licensed retailer or vape shop vendor violates specified provisions of law, MDH must conduct an additional unannounced inspection within 180 days after the initial inspection. To determine the location of a licensed retailer or vape shop vendor subject to an unannounced inspection,

MDH or its designee must use the list of licensed retailers or vape shop vendors as of December 31 of the previous calendar year.

Civil Citations

Under current law, a sworn law enforcement officer or a county health officer (or their designee) may issue a civil citation for (1) a person who sells, distributes, or offers for sale an ESD to an individual younger than age 21 or (2) a person who distributes a tobacco product, tobacco paraphernalia, or a coupon redeemable for a tobacco product to an individual younger than age 21. “Designee” means a retired sworn law enforcement officer employed by a county health officer or an employee of an LHD trained in civil enforcement.

The bill expands the grounds on which a civil citation may be issued to include (1) display of ESD or tobacco products unless the ESD or tobacco products are behind a counter in an area accessible only to the person or the employees of the person and (2) sale of ESD or tobacco products unless the person verifies that the individual is at least age 21 (unless the individual is at least 30 years old).

The bill authorizes the Secretary of Health or the Secretary’s designee to issue a civil citation for these violations. The bill also specifies that “designee” includes a retired sworn law enforcement officer employed by MDH or an employee of MDH trained in civil enforcement for purposes of the sale of ESD, or a retired sworn law enforcement officer employed by the Secretary for purposes of the sale of tobacco products.

Criminal Provisions – Sale to a Minor

Under current law, a person who distributes tobacco products for commercial purposes may not distribute a tobacco product, tobacco paraphernalia, or a coupon redeemable for a tobacco product to an individual younger than 21. In addition, a person may not purchase for, sell to, or distribute to an individual younger than 21 a tobacco product or tobacco paraphernalia. A violator is guilty of a misdemeanor and subject to a fine of up to \$300 for a first violation, \$1,000 for a second violation within two years, and \$3,000 for each subsequent violation within two years after the preceding violation.

The bill increases the maximum fine for a first violation from \$300 to \$500. The bill also specifies that, if a licensee violates these provisions, a court must order ATCC to (1) suspend the license for up to 90 days for a second violation; (2) suspend the license for up to 180 days for a subsequent violation; and (3) revoke the license for each subsequent violation. Upon the court’s determination above, the clerk of the court must send a copy of the final order issued by the court to the Executive Director of ATCC.

Current law specifies that, in a prosecution for a violation, it is a defense that the defendant examined the purchaser's or recipient's license or other valid identification that positively identified the purchaser or recipient as being at least age 21 (or 18 and active-duty military). The bill specifies that examination of identification must be a direct, face-to-face exchange and repeals the obsolete language regarding individuals aged 18 and active-duty military.

Sales Requirements

The bill specifies that a licensed retailer or vape shop vendor may not sell cigarettes, OTP, or ESD, as appropriate, to an individual without verifying the individual is at least age 21 by means of a government-issued identification in a direct face-to-face exchange. The bill specifies that a licensed retailer or vape shop vendor is not required to verify the age of an individual at least 30 years old.

The bill also repeals various obsolete provisions that authorize the sale of cigarettes, OTP, or ESD to a person who is at least age 18 and an active-duty member of the military.

Required Report

ATCC, in conjunction with MDH, the Office of the Comptroller, and the Maryland State Department of Education, must report to specified committees of the General Assembly by October 1, 2025, on (1) the number of cigarette, OTP, and ESD retailers, including information on proximity to schools and health care facilities; (2) the process and procedures currently used by ATCC to maintain a list of all operating businesses that hold specified licenses; (3) the geographic density of such businesses; (4) the feasibility and resulting impact of limiting or establishing a maximum number of licenses; and (5) with regard to the use of tobacco, OTP, and ESD by individuals younger than age 21, an analysis of its prevalence in the population and the public health and economic impacts.

State Revenues:

License Fee – Increases

The bill increases the fee for each county cigarette retail license, ESD retail license, and vape shop vendor license to \$300 and specifies that, for licenses issued in all counties (other than for county cigarette retail licenses issued in Montgomery County), \$275 of the license fee must be distributed to MDH to be used by MDH or its designee to enforce existing laws prohibiting the sale or distribution of tobacco, tobacco products, or ESD to individuals younger than age 21.

ATCC advises that, as of February 2024, a total of 5,758 cigarette retail, ESD retail, and vape shop vendor licenses statewide (which excludes cigarette retail licensees located

within Montgomery County) are subject to the higher fee, with \$275 distributed to MDH for each annual license issued. Thus, MDH special fund revenues increase by almost \$1.2 million in fiscal 2025 (which accounts for the bill's October 1, 2024 effective date) and almost \$1.6 million annually thereafter. These fee revenues are assumed to be received as special funds since they are dedicated to a specific purpose by MDH or its designee.

This analysis assumes the number of licenses issued remains constant in future years. However, to the extent the bill results in fewer licensees maintaining their licenses, ATCC general fund revenues (which are otherwise unchanged under the bill) decrease; likewise, MDH special fund revenues are reduced. These special fund fee revenues are primarily used to offset the costs of conducting at least one unannounced inspection of licensed retailers (cigarette, ESD, and OTP) and vape shop vendors as well as any follow-up inspections as required under the bill and discussed further under the State Expenditures section below. (Even though their fees are not increased, OTP retailers are also required to have at least one unannounced inspection under the bill.)

Fines from Violation of Sales to a Minor

General fund revenues increase by up to \$200 for each first violation of the current prohibition against the sale or distribution of tobacco products to individuals younger than 21 due to the increase in the existing fine. The Judiciary reports that there were 160 such violations recorded in the District Court in fiscal 2023. Should violations remain steady, general fund revenues increase by as much as \$32,000 annually (\$24,000 in fiscal 2025 to reflect the bill's October 1, 2024 effective date). However, as the bill *requires* at least one compliance inspection annually, there may be more violations in the near term.

Sales and Use Tax

A sales and use tax rate of 12% is imposed on the final retail price of ESD (60% in the case of vaping liquid sold in a container that contains at least five milliliters of vaping liquid). (Montgomery County also imposes a 30% tax on the wholesale value of vaping products.) While this analysis assumes that the sale of ESD is not meaningfully reduced by the bill, to the extent the bill does reduce the amount of ESD sold in the State, general fund revenues decrease by an indeterminate amount beginning in fiscal 2025 due to foregone sales and use tax revenues.

State Expenditures: Currently, MDH *may* conduct unannounced inspections of licensed retailers (cigarette, OTP, and ESD) to ensure compliance with age-restricted tobacco sales. MDH's Center for Tobacco Prevention and Control (CTPC) currently provides funding to LHDs to conduct tobacco retailer inspections, while CTPC separately conducts statewide enforcement efforts. The bill *requires* MDH or *its designee* to conduct at least

one inspection of retail cigarette licensees, OTP licensees, and ESD licensees as well as, under the bill, vape shop vendors. ATCC advises that, as of February 2024, approximately 6,475 total such licensees must be inspected annually. To complete more than 5,800 annual inspections (excluding those in Montgomery County), MDH advises that it would delegate funding and inspections to a designee, specifically LHDs, which already have a robust staffing infrastructure to conduct retailer inspections within their jurisdictions. Thus, MDH would distribute *most* revenues from additional license fees (which total almost \$1.2 million in fiscal 2025, as noted above) to LHDs to conduct the required annual inspections. A portion must be retained by MDH, as the department requires at least one full-time administrative officer to oversee grants to LHDs and manage the enforcement operations.

MDH must also notify retailers, LHDs, and other partners of the bill’s requirements. The estimated cost to send a one-time mailing is \$6,510 in fiscal 2025 only – which is, for purposes of this analysis, assumed to be related to enforcement and eligible to be funded with the fee revenues.

MDH further advises that an outside contractor is likely necessary to complete a portion of the study required under the bill. Thus, MDH incurs \$75,000 in contractual expenses, which for purposes of this estimate, are assumed to be incurred in fiscal 2025 (although some portion could be deferred to fiscal 2026 as the report is due October 1, 2025). As this report is tangentially related to enforcement, related expenditures are likewise assumed to be covered by fee revenues.

Accordingly, MDH special fund expenditures increase by almost \$1.2 million in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. This estimate reflects the cost of hiring one full-time administrative officer to oversee grants to LHDs and manage enforcement operations. The estimate includes a salary, fringe benefits, grants to LHDs for required enforcement inspections, one-time start-up costs, mailing costs, and ongoing operating expenses. All of these costs are assumed to be fully covered by the fee revenues.

Position	1.0
Salary and Fringe Benefits	\$66,852
One-time Contractual Costs for Report	75,000
One-time Communications Costs	6,510
One-time Start-up Costs	7,719
Ongoing Operating Expenses	8,374
Local Health Department Grants for Inspections	<u>1,023,133</u>
Total FY 2025 MDH Special Fund Expenditures	\$1,187,588

Future year special fund expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses and more funding (approximately \$1.5 million) made available to LHDs for inspections.

Other Agencies

General fund expenditures for the Judiciary increase by \$44,761 in fiscal 2025 only for computer programming costs. The Judiciary advises that expenditures are necessary to implement the bill's notification and disbursement requirements.

ATCC advises that it is able to handle any changes under the bill with existing resources.

Local Revenues: The bill increases the fee for a license to sell cigarettes at retail in counties. The fee is increased from \$25 in a county other than Cecil or Montgomery, \$50 in Cecil County, and \$125 in Montgomery County to \$300 in all counties. From the license fees collected in Montgomery County, the clerk must distribute \$275 to the county (rather than \$100 under current law) for enforcement activities. For all other counties, \$275 from each licensee fee collected is distributed to MDH for enforcement activities. Accordingly, the \$25 currently retained by Cecil County for each of the 121 such licensees in that county is instead part of the monies distributed to MDH under the bill (totaling about \$3,025 on an annualized basis and about \$2,669 in fiscal 2025 to reflect the bill's October 1, 2024 effective date).

As noted above, MDH advises that most revenue distributed to the department from increased license fees is subsequently distributed as grants to LHDs – in their capacity as the department's designee to conduct the annual unannounced inspections required under the bill – after accounting for other one-time and administrative costs. Thus, LHD revenues (excluding Montgomery County) increase by an estimated \$1,023,133 in fiscal 2025, and by approximately \$1.5 million annually thereafter. The Department of Legislative Services notes that Cecil County likely receives considerably more as grant revenues for its LHD than it foregoes due to the redistribution of fee revenues to MDH. As mentioned above, this analysis assumes the number of licenses issued remains constant in future years. To the extent the number of total licenses issued decreases, local grant revenues are reduced.

The bill retains provisions requiring fees collected from local retail cigarette licenses issued in Montgomery County to be distributed to Montgomery County. Montgomery County currently has 630 such retailers and receives \$100 of the \$125 license fee for enforcement activities. Under the bill, Montgomery County receives a total of \$275 per license (an additional \$175). Thus, Montgomery County revenues increase by \$110,250 on an annualized basis (about \$82,688 in fiscal 2025 to reflect the bill's October 1, 2024 effective date). This analysis assumes the number of such licenses issued in Montgomery County

remains constant in future years. To the extent the number of those licenses decreases, Montgomery County revenues are lower.

Local government revenues may increase minimally due to the \$200 increase in the fine for a first violation of the current prohibition against the sale or distribution of tobacco products to individuals younger than 21. The Judiciary reports that there were two such violations recorded in circuit courts in fiscal 2023.

In addition, local revenues likely increase from the expansion of prohibited actions that are subject to civil penalty. Specially, the bill prohibits the unauthorized sale or distribution and display of ESDs and tobacco products by certain retailers. To the extent that more violations occur as a result of the expansion, local revenues from fines collected increase. Violators are subject to a fine up to \$300 for the first violation; a fine up to \$1,000 for a second violation occurring within 24 months after the first violation; and a fine up to \$3,000 for each subsequent violation occurring within 24 months after the proceeding violation. As the bill *requires* at least one inspection annually, there are potentially more violations in the near term.

Montgomery County imposes a 30% tax on the wholesale value of vaping products. To the extent the bill reduces the sale of ESD in the county, Montgomery County tax revenues decline beginning in fiscal 2025. The amount of the decline depends on the decrease in vaping products sold as a result of the bill.

Local Expenditures: LHDs may incur additional costs to conduct at least one unannounced inspection of retailers and vape shop vendors in their jurisdictions (and any follow-up inspections for licensees with violations). Even so, any such additional costs are anticipated to be covered by annual grants from MDH for enforcement. Montgomery County advises that it already conducts at least one annual compliance check of retailers with additional visits to retailers that are noncompliant; accordingly, expenditures for the county are not expected to materially change.

Small Business Effect: Small business retailers and vape shop vendors are subject to more restrictive and complex compliance standards and restrictions under the bill. The bill also subjects certain small business retailers and vape shop vendors to increased licensing fees higher penalties for violations.

Additional Information

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

Designated Cross File: HB 1180 (Delegate Wilson) - Economic Matters.

Information Source(s): Baltimore City; Harford and Montgomery counties; Alcohol, Tobacco, and Cannabis Commission; Comptroller's Office; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Legislative Services

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