

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
 Third Reader - 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 limits the sale of electronic smoking devices (ESD) to licensed vape shop vendors and restricts such vendors to selling only ESD and their component parts and accessories. Accordingly, the bill repeals the ESD retailer license and provisions allowing ESD manufacturers to sell ESD directly to consumers. The bill prohibits the display of cigarettes, other tobacco products (OTP), or ESD, unless the products are behind a counter, as specified. The Maryland Department of Health (MDH) or its designee must conduct at least one unannounced inspection of licensed retailers/vape shop vendors annually. The bill also (1) increases fees for a county license; (2) requires the court to order the Alcohol, Tobacco, and Cannabis Commission (ATCC) to suspend or revoke licenses, as specified; (3) prohibits a pharmacy from selling tobacco products, OTP, or ESD; and (4) requires ATCC to submit a specified report by October 1, 2025. **The bill’s prohibition regarding pharmacies takes effect October 1, 2025.**

Fiscal Summary

State Effect: MDH general fund revenues increase by \$1.2 million in FY 2025, and by \$1.6 million annually thereafter, from increased license fees; general fund expenditures increase correspondingly for staffing and grants to local health departments (LHDs). General fund revenues increase by \$24,000 in FY 2025 and \$32,000 annually thereafter from increased fines and decrease minimally from repeal of the ESD retailer license. General fund expenditures for the Judiciary increase by \$44,800 in FY 2025 only, for one-time programing costs. To the extent the bill reduces the amount of ESD sold, general fund revenues decrease beginning in FY 2025 (not reflected below).

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
GF Revenue	\$1,224,200	\$1,632,600	\$1,632,600	\$1,632,600	\$1,632,600
GF Expenditure	\$1,246,200	\$1,601,900	\$1,601,900	\$1,601,900	\$1,601,900
Net Effect	(\$22,000)	\$30,800	\$30,800	\$30,800	\$30,800

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

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

Small Business Effect: Meaningful.

Analysis

Bill Summary/Current Law:

Definitions

The bill alters definitions in a manner that allows ESD to only be sold to consumers in Maryland by vape shop vendors with in-person transactions. Further, vape shop vendors are limited to selling only ESD and related accessories.

ESD Manufacturer: Under current law, an ESD manufacturer may sell ESD directly to consumers through mail order, online, telephone, or other electronic purchases. The bill alters the definition of “ESD manufacturer” to eliminate such transactions. Accordingly, under the bill, “ESD manufacturer” mean 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) if the ESD manufacturer also holds the applicable license to act as a vape shop vendor, 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 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 repeals the definition of ESD retailer, consistent with other changes. The bill also alters the definition of “vape shop vendor” to mean an ESD business that *exclusively 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 – Restrictions

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.

However, the bill restricts an ESD manufacturer to selling ESD only to (1) licensed ESD wholesalers located in the State; (2) an ESD wholesaler or retailer located outside the State if the ESD may be sold lawfully in Maryland; or (3) a licensed vape shop vendor. However, if an ESD manufacturer licensee also holds a vape shop vendor license, the licensee may transfer ESD to inventory for sale under the vape shop license.

License Fees – Increases

The bill increases the fee for each county 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 submit \$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 vape shop vendor license from \$25 to \$300. From each license fee, the clerk of the court must submit \$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.

Pharmacy – Restrictions

The bill prohibits a pharmacy for which a pharmacy permit has been issued by the State Board of Pharmacy from selling tobacco products, OTP, or ESD. This prohibition takes effect October 1, 2025; however, under other provisions in the bill, ESD would not be able to be sold in pharmacies beginning on October 1, 2024.

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 and vape shop vendors 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. If a licensed retailer 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 subject to an unannounced inspection, MDH or its designee must use the list of licensed retailers 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.

Sales Requirements

The bill specifies that a licensed retailer/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/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 retail license and vape shop vendor license to \$300 and specifies that, for licenses issued in all counties other than 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.

MDH advises that there are approximately 6,500 retailers statewide, of which 5,825 are outside of Montgomery County. Thus, MDH general fund revenues increase by \$1.2 million in fiscal 2025 (which accounts for the bill's October 1, 2024 effective date), and by \$1.6 million annually thereafter as a result of increased license fees. This analysis assumes that the number of licenses issued remains constant in future years. To the extent the number of total licenses issued decreases, MDH general fund revenues are reduced. Any funds are assumed to be used to offset the costs of conducting at least one unannounced inspection of licensed retailers/vape shop vendors (and any follow-up inspections) as required under the bill and discussed further under the State Expenditures section below.

Repeal of License

The bill repeals the ESD retailer license. Under current law, the annual fee for an ESD retailer license is \$25 and is paid to the county clerk but then forwarded to ATCC. The impact of the repeal on general fund revenues is negligible (approximately \$1,250 a year on an annualized basis although it is unlikely any new licenses would be issued in the three months of fiscal 2025 before the bill takes effect), as MDH previously advised that in 2021 there were approximately 50 active ESD retailer licenses.

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

Under the bill, ESD are only available in licensed vape shops and may no longer be sold in other retail locations or directly to consumers through the mail. 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.) To the extent the bill reduces 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 retailers 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 vape shop vendors. As noted above, there are approximately 6,500 retailers. To complete at least 5,825 annual inspections (excluding the 675 retailers 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 an estimated \$1.2 million in fiscal 2025, as noted above) to LHDs to conduct enforcement inspections. MDH advises that it requires at least one full-time administrative officer to oversee grants to LHDs and manage 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.

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).

Accordingly, MDH general fund expenditures increase by \$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. This estimate includes a salary, fringe benefits, grants to LHDs for 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 revenue.

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>1,036,951</u>
Total FY 2025 MDH General Fund Expenditures	\$1,201,406

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses and more funding 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 in Cecil County is instead forwarded to MDH.

As noted above, MDH advises that most revenue collected from increased license fees will primarily be distributed as grants to LHDs to assist in conducting 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 \$1,036,951 in fiscal 2025, and by approximately \$1.5 million annually thereafter. This analysis assumes that the number of licenses issued remains constant in future years. To the extent the number of total licenses issued decreases, local revenues are reduced.

The bill retains provisions requiring fees collected from local retail licenses issued in Montgomery County to be disbursed to Montgomery County. Montgomery County currently has 675 retailers and receives \$100 of the \$125 license fee for enforcement activities. Under the bill, Montgomery County will receive a total of \$275 per license (an additional \$175). Thus, Montgomery County revenues increase by \$118,125 annually (\$88,594 in fiscal 2025 to reflect the bill's October 1, 2024 effective date). This analysis assumes that the number of licenses issued remains constant in future years. To the extent the number of total licenses issued decreases, local revenues are reduced.

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/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 preceding 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 in their jurisdictions (and any follow-up inspections for retailers 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.

Small Business Effect: Small business retailers/vendors are subject to more restrictive and complex compliance standards and restrictions under the bill. The bill also subjects small business retailers/vendors to increased licensing fees and penalties for violations. Small businesses other than licensed vape shop vendors will no longer be able to sell ESD. Furthermore, small business pharmacies are prohibited from selling cigarettes, OTP, or ESD beginning October 1, 2025 (although the ESD prohibition applies October 1, 2024).

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

Fiscal Note History:
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Analysis by: Donavan A. Ham

Direct Inquiries to:

(410) 946-5510

(301) 970-5510