

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1180 (Delegate Wilson)
 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) in Maryland to licensed vape shop vendors and restricts what licensed vape shop vendors may sell to only ESD and their component parts and accessories. Accordingly, the bill repeals the ESD retailer license and the provisions allowing ESD manufacturers to sell ESD directly to consumers. The bill also prohibits the display of cigarettes, other tobacco products (OTP), or ESD, unless the products are behind a counter. 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 Maryland Department of Health (MDH) must conduct at least two unannounced inspections of licensed retailers/vape shop vendors annually. The bill also (1) prohibits a pharmacy from selling tobacco products, OTP, and ESD; (2) increases penalties for specified violations; (3) increases fees for a county license to sell cigarettes at retail; (4) requires certain licensees to obtain an additional license specific to the manufacture, distribution, or sell of ESD; (5) requires the court to order the Alcohol, Tobacco, and Cannabis Commission (ATCC) to suspend or revoke licenses, as specified; and (6) requires ATCC, in conjunction with MDH, to submit a specified report by December 31, 2024.

Fiscal Summary

State Effect: MDH general fund expenditures increase by \$2.2 million in FY 2025, primarily for staff and vehicles to complete additional inspections, as discussed below. Future years reflect annualization and elimination of one-time costs. General fund revenues increase by \$24,000 due to increased fines. 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	\$24,000	\$32,000	\$32,000	\$32,000	\$32,000
GF Expenditure	\$2,204,700	\$1,805,100	\$1,879,000	\$1,955,200	\$2,034,700
Net Effect	(\$2,180,700)	(\$1,773,100)	(\$1,847,000)	(\$1,923,200)	(\$2,002,700)

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

Local Effect: Local government expenditures may increase to the extent that local jurisdictions require additional staff to monitor and enforce the bill’s provisions. Revenues generally increase (except for in Montgomery County) as a result of increased fees under the bill, 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.

The bill requires that a cigarette or OTP licensee (or an affiliate) must obtain an additional license in order to manufacture, distribute, or sell ESD in accordance with the bill.

The bill also 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.

Retail License Fees

The bill increases the fee for each county license from \$25 in a county other than Cecil or Montgomery, \$50 in Cecil County, and \$100 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 \$100 to the county to be used to enforce existing laws banning the sale or distribution of tobacco products to individuals younger than 21. The bill does not specify where the remaining \$175 per license fee is distributed.

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.

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 to conduct at least two such unannounced inspections each year.

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.

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.

Required Report

ATCC, in conjunction with MDH, must report to specified committees of the General Assembly by December 31, 2024, 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: 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 two compliance inspections annually, there are likely to be more violations in the near term.

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 licensed retailers to ensure compliance with age-restricted tobacco sales. MDH may use an individual younger than 21 to assist in conducting and inspection. The bill *requires* MDH to conduct *at least two* such inspections annually for retail cigarette licensees, OTP licensees, and vape shop vendors. MDH advises that there are approximately

6,500 retailers. To complete at least 13,000 annual inspections, MDH requires 14 full-time administrative officers (inspectors), 28 part-time contractual underage purchasers, and 14 dedicated vehicles.

MDH must also notify retailers, local health departments, 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 (which is due within three months of the bill’s effective date). Thus, MDH incurs \$75,000 in contractual expenses in fiscal 2025 only.

Accordingly, MDH general fund expenditures increase by \$2,204,691 in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. This estimate reflects the cost of hiring 14 full-time administrative officers (inspectors) and 28 part-time contractual underage purchasers to complete approximately 13,000 inspections, as well as one-time contractual expenditures for the report and communications about the bill’s requirements. It includes salaries, fringe benefits, one-time start-up costs, vehicle purchases, mailing costs, and ongoing operating expenses.

Full-time Positions	14.0
Part-time Contractual Positions	28.0
Full-Time Salaries and Fringe Benefits	\$840,207
Vehicles for Inspectors	451,073
Contractual Salaries and Fringe Benefits	408,141
One-time Contractual Costs for Report	75,000
One-time Communications Costs	6,510
One-time Start-up Costs	291,100
Ongoing Operating Expenses	<u>132,660</u>
Total FY 2025 Expenditures	\$2,204,691

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

ATCC and the Judiciary advise that they are 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 \$100 in Montgomery County to \$300 in all counties. From the license fee, the clerk must distribute \$100 to the county to be used to enforce existing laws banning the sale or distribution of tobacco products to individuals younger than 21. While this level of funding is currently distributed to Montgomery County under existing law, all other counties receive additional revenue from the increased fee and new distribution provision. The amount of additional revenues per county depends on the number of retail license holders.

For example, Baltimore City has 1,182 retail license holders. Assuming that the number of license holders remains the same, Baltimore City revenues increase by \$118,200 annually beginning in fiscal 2025.

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. MDH previously advised that in 2021 there were approximately 50 active ESD retailer licenses. Thus, local government revenues decrease minimally as a result of the bill's repeal of the ESD retailer license. To the extent additional vape shop vendor licenses are issued (at a current fee of \$25), revenues are offset.

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.

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: Baltimore City and Montgomery County report that they anticipate additional costs to enforce the bill's provisions. Specifically, Montgomery County reports that it currently completes compliance checks at least once a year with additional visits to retailers that are noncompliant. Montgomery County advises that the county would need to hire at least one full-time compliance officer at an annual cost of \$115,200. Likewise, Baltimore City reports that it anticipates hiring two additional compliance officers at an annual cost of \$174,000.

However, to the extent MDH hires additional staff as described above and conducts the additional inspections required under the bill, local expenditures do not likely increase as a result of the bill.

Small Business Effect: Small business retailer/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, and ESD.

Additional Comments: Chapter 396 of 2019 raised the minimum age for an individual to purchase tobacco products from 18 to 21, with specified exceptions for active-duty military at least age 18 who present valid military identification. Federal legislation, effective December 20, 2019, raised the federal minimum age for the purchase of tobacco products from 18 to 21 without exceptions. Although this bill preserves obsolete State exceptions for active-duty military ages 18 to 20, these exceptions are not compliant with federal law.

Additional Information

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

Designated Cross File: SB 1056 (Senator Kramer) - Finance.

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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