

**Department of Legislative Services**  
Maryland General Assembly  
2022 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 1341  
Economic Matters

(Prince George's County Delegation)

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**Prince George's County – Other Tobacco Products and Electronic Smoking  
Devices – Requirements and Limitations**

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This bill authorizes Prince George's County to enact and enforce local laws that regulate the sale and distribution of other tobacco products (OTP) and electronic smoking devices (ESD), including laws that (1) limit the number of OTP and ESD retailer and vape shop vendor licenses issued in the county; (2) establish requirements for license applicants or licensees in the county; and (3) prohibit the operation of OTP, ESD, and vape shop vendor businesses in designated geographic areas, including through the use of density zone restrictions. The Clerk of the Circuit Court for Prince George's County must deny an OTP or ESD retailer or vape shop vendor license under specified circumstances, including if the applicant acts or seeks to act as an OTP or ESD retailer or vape shop vendor at a location within a specified proximity to a primary or secondary school or in a census tract with a specified density of existing licensed premises. The bill similarly authorizes the Executive Director of the Alcohol and Tobacco Commission (ATC) to deny, suspend, or revoke a license or reprimand a licensee under specified circumstances.

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**Fiscal Summary**

**State Effect:** It is unclear how certain provisions of the bill could be implemented; however, the operations of ATC and the Clerk of the Circuit Court for Prince George's County are likely affected, and general fund expenditures for these agencies are potentially also affected, as discussed below. General fund revenues potentially decrease beginning in FY 2023, as discussed below.

**Local Effect:** Prince George's County revenues and expenditures are potentially affected, as discussed below.

**Small Business Effect:** Meaningful.

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## Analysis

**Bill Summary:** The clerk must deny an OTP retailer, ESD retailer, or vape shop vendor license to an applicant if the applicant:

- acts or seeks to act as an OTP retailer, ESD retailer, or vape shop vendor at a location that is within 1,500 feet of a public or private primary or secondary school;
- acts or seeks to act as an OTP retailer, ESD retailer, or vape shop vendor at a location in a census tract that has an average of three or more existing licensed premises per square mile, as specified;
- is delinquent in the payment of State taxes; or
- does not meet any other requirement established by the county for applicants or licensees.

Similarly, with respect to applicants and licensees in Prince George's County, the Executive Director of ATC may deny a license to any applicant, reprimand a licensee, or suspend or revoke a license under the above-specified circumstances.

**Current Law:** Titles 16.5 and 16.7 of the Business Regulation Article govern tobacco licensing and the sale and distribution of OTP and ESD. A person must hold an appropriate license before the person may act as an OTP retailer, ESD retailer, or vape shop vendor. However, a person licensed to sell cigarettes or OTP at retail may sell ESD at retail without obtaining a separate license. Licenses to sell tobacco products at retail, including OTP and ESD retailer and vape shop vendor licenses, are issued by the clerks of the circuit courts.

### *Definitions*

“ESD” is defined as a device that can be used to deliver aerosolized or vaporized nicotine to an individual inhaling from the device. It 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 (FDA) under the Food, Drug, and Cosmetic Act.

“OTP” is defined as any product that is intended for human consumption or likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested in any manner that is made of, derived from, or contains tobacco or nicotine, with specified exclusions. “OTP” (1) includes cigars, premium cigars, pipe tobacco, snuff, snus, filters, rolling papers, pipes, and hookahs and (2) excludes cigarettes, ESD, tobacco pipes (as

defined in the Tax General Article), or drugs, devices, or combination products authorized for sale by FDA under the federal Food, Drug, and Cosmetic Act.

Chapter 12 of 2019 and Chapters 359 and 360 of 2020 transferred alcohol and tobacco enforcement duties from the Comptroller's Field Enforcement Division to ATC effective January 1, 2021. Thus, ATC is responsible for monitoring and enforcement activity related to tobacco licenses. The Comptroller's Office, however, retains duties related to enforcement of tobacco taxes.

#### *Other Tobacco Products Retailer License*

An OTP retailer license authorizes the licensee to (1) act as an OTP retailer; (2) buy OTP on which the tobacco tax has been paid from an OTP wholesaler; and (3) buy premium cigars or pipe tobacco on which the tobacco tax has not been paid from an OTP manufacturer. (An OTP retailer license is distinct from a tobacconist license, which authorizes a licensee to act as a tobacconist. "Tobacconist" means an OTP business that derives at least 70% of its revenues, measured by average daily receipts, from the sale of OTP and tobacco-related accessories.)

#### *Electronic Smoking Devices Retailer and Vape Shop Vendor Licenses*

An ESD retailer license authorizes the licensee to (1) sell ESD to consumers; (2) buy ESD from an ESD wholesaler distributor or wholesaler importer; (3) if the licensee also holds an ESD manufacturer license, sell at retail ESD manufactured under the manufacturer license; and (4) subject to restrictions, distribute sample ESD products to consumers in the State. A vape shop vendor license authorizes the licensee to (1) sell ESD as a vape shop vendor; (2) if the licensee also holds an ESD manufacturer license, sell at retail ESD manufactured under the manufacturer license; and (3) buy ESD from an ESD manufacturer, wholesaler distributor, or wholesaler importer. "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.

#### *Issuance of Licenses*

An applicant for a license to act as an OTP retailer, ESD retailer, or vape shop vendor must obtain a county license by submitting to the clerk an application for each permanent or temporary place of business located in the same enclosure and operated by the same applicant. The annual license fee is \$15 for an OTP retailer license and \$25 for an ESD retailer or vape shop vendor license. The clerk must issue a license to each applicant who meets the requirements for licensure. The license expires annually unless renewed. A licensee may renew the license for an additional one-year term if the licensee is otherwise

entitled to be licensed, submits a renewal application to the clerk, and pays the annual license fee.

### *Denials, Reprimands, Suspensions, and Revocations*

The Executive Director of ATC may deny a license to an applicant, reprimand a licensee, or suspend or revoke a license for specified violations (including for a violation of tobacco tax requirements, in the case of an OTP license). Subject to hearing provisions, the executive director must deny a license to any applicant who has had a license revoked until (1) one year has passed since the revocation and (2) it satisfactorily appears to the executive director that the applicant will comply with the applicable laws and regulations.

### *Penalties for License Violations*

A person who violates a provision of the Business Regulation Article relating to OTP or ESD licenses is guilty of a misdemeanor and subject to a fine of up to \$1,000 and/or up to 30 days imprisonment.

### *Tobacco Product Taxes*

Chapter 37 of 2021 increased (1) the tobacco tax rate for cigarettes from \$2.00 to \$3.75 per pack of cigarettes and (2) the tobacco tax rate for OTP other than cigars and pipe tobacco from 30% to 53% of the wholesale price. Generally, the tax rate for cigars is 70% of the wholesale price of the cigars. The tax rate for premium cigars is 15% of the wholesale price of the premium cigars, and the tax rate for pipe tobacco is 30% of the wholesale price of the pipe tobacco. Chapters 767 and 768 of 2021 make various modifications to tobacco tax provisions as they apply to out-of-state sellers of premium cigars and pipe tobacco, effective July 1, 2022.

ESD and their components are subject to the State sales and use tax but are not subject to a State excise tax. Chapter 37 of 2021 increased the sales and use tax rate that generally applies to these products to 12% and increased the sales and use tax rate for vaping liquid sold in a container that contains up to 5 milliliters of vapid liquid to 60% of the taxable price. Montgomery County imposes a 30% tax on the wholesale value of vaping products.

### *Altadis U.S.A., Inc. et al. v. Prince George's County, Maryland*

In *Altadis U.S.A., Inc. et al. v. Prince George's County, Maryland* 431 Md. 307 (2013), the petitioners challenged the validity of two Prince George's County ordinances regulating the packaging, sale, or other distribution of cigars, contending that the ordinances conflicted with State statutes. The Court of Appeals held that State law occupied the field

of regulating the packaging and sale of tobacco products, including cigars, and so preempted the two ordinances. Thus, the Prince George's County ordinances were invalid.

**State/Local Fiscal Effect:** As noted above, the bill authorizes the county to enact and enforce local laws that regulate the sale and distribution of OTP and ESD, including laws that (1) limit the number of OTP and ESD retailer and vape shop vendor licenses issued in the county; (2) establish requirements for license applicants or licensees in the county; and (3) prohibit the operation of OTP, ESD, and vape shop vendor businesses in designated geographic areas. The bill also establishes specific geographic restrictions that apply to the issuance of ESD and OTP retailer and vape shop vendor licenses in the county. Namely, the clerk may not issue an OTP or ESD retailer license or vape shop vendor license to an applicant for a location (1) within 1,500 feet of a public or private primary or secondary school or (2) in a census tract that has an average of three or more existing licensed premises per square mile.

It is unclear how the bill's geographic restrictions relating to OTP and ESD retailer and vape shop vendor licenses could be implemented, absent the availability of geographic information needed to determine whether an applicant's or licensee's place of business complies with these restrictions. Currently, neither the office of the clerk nor ATC has the data or expertise to make such determinations. Thus, general fund expenditures for the Judiciary and/or ATC increase beginning in fiscal 2023 to the extent that either agency must obtain geographic information system services and/or hire additional staff to assist with licensure and/or enforcement operations. To the extent that another State or county agency has the resources to make such determinations and provide certification to the clerk and/or ATC, such costs are potentially avoided. However, the bill does not contemplate such a process of certification, and it is unclear whether another agency may be available to perform this work.

The operations of ATC and the Judiciary may be further affected to the extent the bill's prohibitions result in additional contested cases, which may be subject to judicial review.

To the extent that the bill's restrictions on the issuance of OTP and ESD retailer and vape shop vendor licenses in the county, as well as any restrictions the county may choose to enact under the bill, limit the number of licenses issued in the county, county revenues and State general fund revenues decrease minimally due to forgone license fee revenues. As noted above, annual license fees are \$15 for an OTP retailer license and \$25 for an ESD retailer or vape shop vendor license. Generally, 92% of the license fee revenue collected by the clerks of the circuit courts for tobacco retail licenses, including ESD retailer and vape shop vendor licenses, is distributed to local governments; the remaining 8% accrues to the State general fund.

Otherwise, the bill's impact depends on any local laws governing the sale and distribution of OTP and ESD that the county may choose to enact under the bill. County revenues and expenditures are potentially affected to the extent that the county enacts and enforces local laws governing the sale and distribution of these products. Further, to the extent the county enacts and enforces local laws that have the effect of restricting or reducing the sale and consumption of OTP or ESD, State general fund revenues may be affected due to forgone tax revenues collected from the sale of these products. Any such impacts, however, cannot be reliably predicted.

**Small Business Effect:** The bill generally restricts the number of OTP and ESD retailer and vape shop vendor licenses that may be issued in the county and the locations where OTP and ESD retailer and vape shop vendor businesses may operate. Additionally, licensed OTP and ESD retailer and vape shop vendor businesses in the county are potentially subject to additional local regulation to the extent that the county enacts and enforces local laws relating to the sale and distribution of OTP and ESD.

The bill applies to both new and existing licensed OTP and ESD retailer and vape shop vendor businesses in the county. To the extent that existing licenses exceed the bill's density restriction in a given census tract, and/or otherwise violate the bill's restrictions on licensure, it is assumed that these licensed businesses are potentially prohibited from continuing to operate at their current location and may be subject to license suspension, revocation, or other disciplinary action by ATC if they continue to do so.

It is unclear to what extent the bill's restrictions apply to businesses that are exempt from licensure under Title 16.7 of the Business Regulation Article. Pursuant to § 16.7-102 of the Business Regulation Article, a person who is licensed under Title 16 ("Cigarettes") or Title 16.5 ("Other Tobacco Products Licenses") is authorized to manufacture, distribute, or sell ESD without obtaining a separate ESD license.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Prince George's County; Alcohol and Tobacco Commission; Comptroller's Office; Judiciary (Administrative Office of the Courts); Office of Administrative Hearings; Department of Legislative Services

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