

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1000
Economic Matters

(Delegate Wilson)

Finance

Alcohol and Tobacco Commission – Updates

This bill requires a person to hold a common carrier permit to transport premium cigars and tobacco or pipe tobacco in the State and to report information to the Alcohol and Tobacco Commission (ATC), as specified. The bill also (1) requires a remote tobacco seller shipping premium cigars or pipe tobacco into the State to annually provide specified information to ATC instead of the Comptroller’s Office which had previous authority and (2) prohibits a common carrier permit from requiring a signature for a shipment to a licensed tobacconist. The bill (1) authorizes ATC and the Maryland Department of Health (MDH) to take specific actions (including unannounced warrantless searches) during the course of investigations and enforcement and (2) requires specific notification to be sent to the Field Enforcement Division of ATC. Furthermore, the bill authorizes ATC to take specific action with contraband tobacco products and requires ATC, in collaboration and consultation with MDH and others, to develop strategies for enforcement. The bill also requires the Governor’s Office of Small, Minority, and Women Business Affairs (GOSBA) to conduct a study, as specified. The study must be submitted to the Governor and General Assembly by December 1, 2024, in accordance with applicable provisions of the State Government Article. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: General fund expenditures increase by between \$75,000 and \$500,000 cumulatively in FY 2024 and 2025 for GOSBA to conduct the required study, as discussed below.

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

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

Common Carrier Permits

Under current law, a holder of a common carrier permit is authorized to deliver wine from a location inside or outside the State to a consumer in the State for the consumer's personal use. The person must be issued a common carrier permit before the person may engage in transporting wine from a direct wine shipper to a consumer. At the time of initial application for a common carrier permit and on request of ATC (previously the Comptroller), a common carrier must submit to ATC information concerning the training of its drivers in verifying the age of recipients of direct wine shipments. At least once each year, in a manner acceptable to ATC, a holder of a common carrier permit must verify that the shipper of wine into the State holds a valid direct wine shipper's permit.

The bill establishes that to transport premium cigars and tobacco or pipe tobacco in the State, a person must (1) have a common carrier permit and (2) adhere to specific reporting requirements.

Investigation and Enforcement Actions

Under current law, ATC may deny a license to an applicant, reprimand a licensee, or suspend or revoke a license if the applicant or licensee:

- fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another person;
- fraudulently or deceptively uses a license;
- fails to comply with the Maryland Cigarette Sales Below Cost Act or regulations adopted under that Act;
- fails to comply with the provisions of Title 11, Subtitle 5A of the Commercial Law Article;
- buys cigarettes for resale in violation of a license; or from a person who is not a licensed cigarette manufacturer, licensed subwholesaler, licensed vending machine operator, or licensed wholesaler;
- is convicted, under the laws of the United States or of any other state, of a felony; or a misdemeanor that is a crime of moral turpitude and is directly related to the fitness and qualification of the applicant or licensee; or
- has not paid a tax due before October 1 of the year after the tax became due.

ATC may suspend or revoke a license if the licensee violates applicable laws and regulations, as specified.

The bill clarifies that ATC may deny a license to an applicant, reprimand a licensee, or suspend or revoke a license if the applicant or licensee uses the licensed premises in a manner that does not conform to all zoning laws, regulations, or ordinances adopted in accordance with the land use article, *on a finding by the appropriate local administrative officer or unit responsible for zoning enforcement*.

MDH may conduct unannounced inspections of a licensed retailer to ensure the licensee's compliance with applicable law. Current law also authorizes MDH to use an individual under the age of 21 years to assist in conducting inspections.

The bill further authorizes ATC and MDH to conduct an unannounced inspection or search of a licensed retailer's premises, without a warrant, to ensure the licensee's compliance. The bill also allows ATC to use persons under the age of 21 for an inspection. Under the bill, ATC has the authority to make arrest of persons that violate specific punishable offenses. However, during an inspection or search, a premium cigar or pipe tobacco licensed retailer is not subject to seizure without a warrant.

Miscellaneous Provisions

Under current law, a person who distributes tobacco products for commercial purposes, including a person licensed under Title 16 of the Business Regulation Article, may not distribute to an individual under the age of 21 years. The bill requires that the local health department report such violations to the ATC.

Generally, contraband alcoholic beverages that are seized and forfeited may be disposed of or destroyed. The Comptroller must sell at public auction a conveyance that is seized under in connection with contraband alcoholic beverages and forfeited. The Comptroller must sell contraband tobacco products seized and forfeited to a State institution, a nonprofit charitable institution, a licensed cigarette wholesaler, or a licensed cigarette manufacturer in the manner the Comptroller determines at a public auction. The bill authorizes the Comptroller and ATC to dispose of or destroy contraband tobacco products or sell the contraband tobacco products to a State institution, a nonprofit charitable institution, a licensed cigarette wholesaler, or a licensed cigarette manufacturer in the manner determined by the Comptroller or ATC.

Governor's Office of Small, Minority, and Women Business Affairs – Study

Chapters 749 and 750 of 2022 required GOSBA in consultation with specified entities, to conduct a study of the participation of minority-owned businesses in the alcoholic

beverages industry in the State and report its findings and recommendations to the Governor and General Assembly by January 1, 2023.

The bill requires GOSBA in consultation with the Office of the Attorney General, Maryland Department of Transportation (MDOT), and ATC to conduct a similar study. GOSBA must contract with an independent consultant to complete a study of the structure and composition of the wholesale and distribution sector of the alcoholic beverages industry in the State and to make recommendations on identifying and eliminating barriers to minority participation in the industry, as specified.

The study must include the following:

- current and historical minority-owned business participation rates and data;
- how the structure of the wholesale and distribution sector of the Maryland alcoholic beverages industry compares to similar structures in other licensing states;
- how the participation of minority-owned businesses in Maryland compares to minority-owned business participation in other states, where available; and
- information about the procedures by which applicants procure exclusive contracts to provide alcoholic beverage service for product brands within the State

The Office of the Comptroller, each local licensing board, and each license holder must cooperate with requests from GOSBA or the independent consultant, as specified. Information provided in accordance with the study from each holder of a State or local alcoholic beverages license or permit, or applicant for a license or permit must (1) constitute confidential commercial information and confidential financial information and (2) be treated as confidential by the independent consultant and the State. However, the information provided may only be used for purposes authorized under the bill and if disclosed to the public, only in an anonymized or aggregated format.

By December 1, 2024, GOSBA must submit a report along with specified recommendations to the General Assembly in accordance with applicable provisions of the State Government Article.

State Fiscal Effect: GOSBA advises that the alcohol industry study, specified in the bill, is a unique assessment and the research analysis proposed in the bill is not distinctly a disparity study and will not likely include the same data points and data collection methods previously utilized in other studies to identify potential remedial measures in a specific industry. As such, the process will have to begin with a Request for Information to determine the research methodology. In consultation with MDOT (the agency that typically procures the disparity study) GOSBA estimates costs ranging between \$75,000 to

\$500,000. This reflects the cost to conduct research and make recommendations regarding minority inclusion in Maryland's alcohol industry.

Additional Information

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

Designated Cross File: None.

Information Source(s): Alcohol and Tobacco Commission; Governor's Office of Small, Minority, and Women Business Affairs; Maryland Department of Transportation; Office of the Comptroller; Department of Legislative Services

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