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FISCAL AND POLICY NOTE
First Reader

Senate Bill 842
Finance

(Senator Beidle)

**Other Tobacco Products and Electronic Smoking Devices - Seizure and
Wholesaler Licensure Requirements**

This bill authorizes the Executive Director of the Alcohol, Tobacco, and Cannabis Commission (ATCC) or a peace officer, without a warrant, to seize other tobacco products (OTP) and electronic smoking devices (ESD) that are sold or offered for sale in violation of Titles 16.5 or 16.7 of the Business Regulation Article, respectively. The bill establishes procedures for notice of seizure, claim for the return of seized property, and destruction of seized OTP and ESD. A peace officer must deliver seized OTP or ESD to the executive director or a location designated by the executive director. The bill also establishes an ESD wholesaler license, including specified reporting requirements.

Fiscal Summary

State Effect: General fund revenues increase minimally beginning in FY 2026 from fees for licenses issued by ATCC and clerks of the court. The bill's penalty provisions are not anticipated to materially affect District Court caseloads, general fund revenues, or general fund expenditures. ATCC can implement the bill's requirements related to seizure of OTP and ESD, including hearing procedures and recordkeeping, with existing resources, as discussed below.

Local Effect: Local government revenues may increase minimally beginning in FY 2026 for each county license issued to an ESD wholesaler, as discussed below. License fees collected by a single county are unlikely to materially affect that county's revenues.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Notice of Seizure

The executive director or a peace officer must give notice of a seizure to the person from whom the OTP or ESD is seized at the time of seizure, stating the right of the owner or other interested person to file a claim for return of the seized property.

Claim for the Return of Seized Property

The owner of the seized property or another interested person may file a claim for return of the OTP or ESD with the executive director within 30 days after seizure. A person forfeits any interest in, right to, or title to seized OTP or ESD if the person fails to timely file a claim for return.

If a person files a claim for the return of seized OTP or ESD, the executive director (or their designee) must promptly act on the claim and hold an informal hearing. Unless there is satisfactory evidence that the owner or person was not in compliance with any provision of Title 16.5 or Title 16.7 of the Business Regulation Article at the time of seizure, the executive director (or their designee) must direct return of the seized property. The executive director (or their designee) must grant or deny the claim for return of seized OTP or ESD by mailing the owner or person a notice of final determination.

Treatment of Seized Property

OTP or ESD seized by the State must be transported, stored, and destroyed in compliance with applicable local, State, and federal law. The executive director (or their designee) must keep a record of all property destroyed, including the nature and quantity of the property, the reason for the seizure, and the manner of destruction.

The executive director must post a notice of each seizure and forfeiture of OTP or ESD on ATCC's website for at least one year after the notice of seizure that includes a description of the property seized, the reason for the seizure, and the time and place of the seizure.

Responsibility for Costs and Penalties

The executive director may impose and collect costs sufficient to cover transportation, storage, and disposal of OTP or ESD seized by the State and may recover in a civil action reasonable expenses incurred in investigating and preparing the case, including attorney's

fees. Failure to pay such costs or expenses must be considered grounds for denial or revocation of a license.

A person who possessed or offered for sale seized OTP or ESD is not relieved from responsibility for any penalty under specified titles of the Business Regulation Article or reimbursement of the costs of transportation, storage, or disposal of the seized OTP or ESD.

Electronic Smoking Devices Wholesaler License

Definitions and Prohibitions: “ESD wholesaler” means a person that (1) holds ESD for sale to another person for resale or (2) sells ESD to another person for resale.

A person must hold an appropriate license before the person may act as an ESD wholesaler in the State.

The definition of “ESD manufacturer” is altered to include a person that sells ESD to a consumer if the consumer purchases or orders the devices through a licensed ESD wholesaler.

Application and Fee: An applicant for a license to act as an ESD wholesaler must obtain an appropriate county license and pay to the executive director a fee of \$150. The executive director must issue an appropriate license to each applicant that meets the requirements for a license to act as an ESD wholesaler.

Authority: An ESD wholesaler license authorizes the licensee to (1) sell ESD to ESD retailers and vape shop vendors; (2) buy ESD directly from an ESD manufacturer, ESD wholesaler, ESD wholesaler distributor, or ESD wholesaler importer; (3) hold ESD; and (4) sell ESD to another licensed ESD wholesaler, an ESD wholesaler distributor, or an ESD wholesaler importer.

Sale or Surrender of License: If a licensed ESD wholesaler sells the licensee’s ESD business and pays a license assignment fee of \$10, the licensee may assign the license to the buyer of the business if the buyer otherwise qualifies. If a licensed ESD wholesaler surrenders their license (and no disciplinary actions are pending), the executive director must refund a prorated portion of the license fee.

Record-keeping Requirements: Each ESD wholesaler must (1) receive an invoice for each purchase of ESD; (2) keep a record of all ESD received and post specified information each day; (3) keep a record of the name and address of each ESD retailer to which a sale is made and prepare for each sale an invoice that shows the political subdivision where the

retailer is located; and (4) keep a complete and accurate record of each sale of ESD to an out-of-state person for resale to out-of-state consumers.

Each ESD wholesaler must make an inventory record each month of all ESD on the premises or under the control of the ESD wholesaler, as specified. ESD transferred to retail stock by written memorandum need not be included in the inventory record. Each ESD wholesaler must keep such records for up to six years and allow the executive director to examine the records.

Penalty for Failure to Obtain a License: A person may not act, attempt to act, or offer to act as an ESD wholesaler unless the person has an appropriate license. As under current law for other ESD licenses, violators are guilty of a misdemeanor and are subject to a fine up to \$1,000 and/or imprisonment for up to 30 days. Each day that a violation continues is a separate offense.

Current Law: The Business Regulation Article governs the licensing of OTP and ESD manufacturers, wholesalers, retailers, storage warehouses, and vending machine operators (as well as cigarette licensees). ATCC issues manufacturer, wholesaler, storage warehouse, and vending machine operator licenses. The clerks of the circuit courts issue retail licenses. Without an appropriate license (with limited exception), a person may not act, attempt to act, or offer to act as (1) an OTP manufacturer, retailer, storage warehouse, wholesaler, or tobacconist or (2) an ESD manufacturer, retailer, wholesaler distributor, wholesaler importer, or vape shop vendor. Violators are guilty of a misdemeanor and are subject to a fine up to \$1,000 and/or imprisonment for up to 30 days. Each day that a violation continues is a separate offense.

Electronic Smoking Devices Wholesaler Distributor and Wholesale Importer Licenses

Statute specifies that an ESD wholesaler distributor (1) obtains at least 70% of its ESD from a holder of an ESD manufacturer license or a business entity located in the United States and (2) holds ESD for sale to another person for resale or sells ESD to another person for resale. An ESD wholesaler importer (1) obtains at least 70% of its ESD from a business entity located in a foreign country and (2) holds ESD for sale to another person for resale or sells ESD to another person for resale.

Cigarette and Other Tobacco Products Licenses

Any person licensed under Title 16 or 16.5 of the Business Regulation Article (cigarette and OTP licenses) is authorized to manufacture, distribute, or sell ESD and is not required to obtain an additional ESD license.

Seizure of Other Tobacco Products – Conveyances

Title 13 of the Tax-General Article outlines requirements related to seizure of contraband tobacco products. “Contraband tobacco products” means cigarettes or OTP (1) on which the tobacco tax is not paid and (2) that are delivered, possessed, sold, or transported in the State in a manner that is not authorized under Title 12 of the Tax-General Article or Title 16 of the Business Regulation Article (which governs cigarette licenses).

Section 13-835 of the Tax-General Article authorizes the Comptroller, the Executive Director of ATCC, or a peace officer of the State to (1) seize contraband tobacco products in the State without a warrant; (2) stop and search a conveyance (aircraft, vehicle, or vessel) in the State if there is knowledge or reason to suspect that the conveyance is being used to transport contraband tobacco products with a retail value of \$100 or more; and (3) seize a conveyance being used in the State to transport contraband tobacco products.

Notice of the seizure must be given to the person from whom the property is seized at the time of the seizure. The Comptroller or the executive director must (1) where possible, give notice of the seizure to the registered owner of a seized conveyance and (2) publish a notice of seizure of the conveyance in a newspaper of general circulation in the county where the seizure occurred. The owner or another person with an interest in the seized property may file a claim for return with the Comptroller or the executive director within 30 days after the seizure (or publication of a notice of the seizure of a conveyance).

If a person files a claim for return of seized property or a conveyance used for the transportation of contraband property, the Comptroller, the executive director, or their designee must promptly act on the request, hold an informal hearing, and direct the return of the property if specified requirements are met. A person forfeits any interest in, right to, or title to seized property if the person fails to timely file a claim for return.

Contraband tobacco products seized and forfeited must be sold to a State institution, a nonprofit charitable institution, a licensed cigarette wholesaler, or a licensed cigarette manufacturer in a specified manner. A seized conveyance must be sold at public auction, with net proceeds of the sale (after deducting for the costs of seizure and disposal) transferred to the Comptroller for distribution under Title 2 of the Tax-General Article.

State Fiscal Effect:

Electronic Smoking Devices Wholesaler Licenses

Under the bill, ATCC must issue a new ESD wholesaler license. The ESD wholesaler license application fee is \$150. Revenues from this fee accrue to the general fund. ATCC

advises that general fund revenues increase minimally due to the collection of license fees for ESD wholesaler licenses.

As stated above, an ESD wholesaler distributor must obtain a minimum of 70% of ESD from a licensed ESD manufacturer or a business entity located in the United States, while an ESD wholesaler importer must obtain a minimum 70% of ESD from a business entity located in a foreign country. Under the bill, an ESD wholesaler license does not have restrictions related to where ESD must be obtained. Thus, ATCC advises that current ESD wholesaler distributor and ESD wholesaler importer licensees may switch to the new ESD wholesaler license due to lesser restrictions on the source of ESD. According to ATCC, there are currently 65 ESD wholesaler distributor licensees, and 2 ESD wholesaler importer licensees. Because the license fee for an ESD wholesale distributor, ESD wholesaler importer, and the new ESD wholesaler license have the same application fee of \$150, there is minimal or no fiscal impact if this occurs as a result of the bill.

Further, as noted above, any person licensed under Title 16 or 16.5 of the Business Regulation Article (tobacco licenses) is authorized to manufacture, distribute, or sell ESD and is not required to obtain an additional ESD license. The bill does not confer authority to licensees under Title 16 or 16.5 of the Business Regulation Article to act as an ESD wholesaler. Thus, it is assumed that a cigarette or OTP licensee that acts as an ESD wholesaler, as specified in the bill, would need to obtain an ESD wholesaler license. However, based on information received from ATCC, it is not anticipated that many ESD wholesaler licenses would be issued under this scenario, resulting in minimal general fund revenues from the associated fees beginning in fiscal 2026.

Under the bill, the local clerks of the court issue a county license required for an ESD wholesaler license. The license fee is \$25. Generally, revenues from business licenses issued by local clerks of the court are split between local government (92%) and the State general fund (8%). Therefore, general fund revenues increase by a minimal amount from county licenses issued by local clerks. Revenues are confined solely to 8% of the revenue generated from licenses issued to an ESD wholesaler. Given the State/local revenue split and that ATCC anticipates that the number of net new ESD wholesaler licenses is anticipated to be minimal, the effect on the general fund from county licenses issued for an ESD wholesaler license is also anticipated to be minimal beginning in fiscal 2026.

The bill's penalty provisions are not anticipated to materially affect District Court caseloads, general fund revenues, or general fund expenditures.

Record-keeping Requirements and Enforcement

Currently, ATCC is authorized to seize contraband OTP under Title 13, Subtitle 8 of the Tax-General Article. Under the bill, the executive director (or their designee) must keep a

record of all property destroyed and post a notice of each seizure and forfeiture of OTP or ESD on ATCC's website for at least one year after the notice of seizure. ATCC advises that these recordkeeping and notice responsibilities can be handled with existing resources. As ATCC enforces current statutory provisions related to seizure of contraband OTP, any additional enforcement duties for seizure of OTP or ESD under the bill can also be implemented with existing resources.

Local Fiscal Effect: Consistent with the State/local revenue split for clerk-issued licenses discussed above, local government revenues increase beginning in fiscal 2026 by \$23 (92% of \$25) for each license issued to an ESD wholesaler by a local clerk of the court. As discussed above, ATCC anticipates that most applicants for ESD wholesaler licenses will be the current ESD wholesaler distributor and ESD wholesaler importer licensees, resulting in minimal or no fiscal impact. Correspondingly, the same fiscal effect is anticipated for county licenses that are canceled and reissued to ESD wholesalers.

ATCC advises that the bill's provisions related to seizure of OTP and ESD are anticipated to have a negligible effect on local law enforcement agencies, because ATCC is primarily involved in seizures of OTP and ESD in the State.

Additional Information

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

Designated Cross File: HB 1241 (Delegate Amprey) - Economic Matters.

Information Source(s): Alcohol, Tobacco, and Cannabis Commission; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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