



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

SB0918 Fact Sheet

The proposed electronic cigarette legislation, Senate Bill 0918, will drastically improve Maryland's ESD marketplace. It will do this by bringing much-needed improvements to existing ESD law to ensure that ESD businesses are operating lawfully and fairly in Maryland.

1. Requires licensure for all ESD businesses

- a. Requires that all businesses that manufacture, distribute, or sell ESDs in Maryland obtain a specific ESD license, eliminating the existing license exemption that exists for businesses that sell cigarettes or other tobacco products. Removing this exception will allow the State to better know who is doing ESD business, aiding the State's ability to enforce the law.
- b. Increased licensing fees to compensate ATCC for the increased number of license applications to review. License fees for ESD manufacturers, wholesale distributors, and wholesale importers are now the same as for ESD retailers and vape shop vendors (\$300).

2. Removes internet sales loophole and requires license for distribution

- a. Closes an existing loophole that permits manufacturers to sell directly to individuals over the internet.
 - i. Maryland has long had an internet sales ban for traditional combustible cigarettes and ESDs should similarly only be sold in face-to-face transactions to ensure that the purchaser is at least 21 years old.
- b. ESD sales will operate similarly to traditional combustible cigarette sales: licensed manufacturers may only sell to licensed wholesalers or importers, and retailers/vape shop vendors may only purchase ESDs from licensed wholesalers.
 - i. There is a carve-out for entities that are both licensed manufacturers and licensed retailers/vape-shop vendors; they can transfer ESDs from the manufacturer to the retailer/vape shop without going through a wholesaler.
 - ii. This is how cigarette sales work: manufacturer to wholesaler to retail level. It also ensures that only Maryland-licensed entities can conduct ESD business in (or destined for) the State.

3. Improved inspection and referral authority

- a. Gives the ATCC express authority to conduct unannounced inspections of ESD business, just as it has for traditional combustible cigarettes.
- b. Gives the Department of Health the ability to refer violations of the law to ATCC for further enforcement action.

4. Creates an ESD directory of approved ESD products

- a. Creates an ESD directory: ESD manufacturers must apply to the OAG each year for certification and admission onto the directory. This is the same process that has been used for traditional cigarettes for more than 20 years; creating an ESD directory treats ESDs the same as cigarettes, which must go through the same process before they may be sold in Maryland.
- b. Through the certification process, the OAG will receive information about the manufacturer and the products it seeks to sell in Maryland. This includes information about the products the manufacturer sells and has sold, what products it seeks to list on the directory, what the ESD products look like, the marketing and advertising for the ESD products, and whether the products and/or their advertising are designed to appeal to youth or are deceptive.
 - i. The OAG will be evaluating the products and their marketing to determine whether they are meant to appeal to youth or mislead consumers in another way. This assessment will look at whether the products come in youth-appealing flavors, such as candy-flavors; whether the marketing and advertising includes cartoons or other images that are aimed at youth, or a youth-appealing sponsorships or tie-ins; whether the ESD incorporates games or interactive designs; whether the physical design is meant to obscure or hide that it is an ESD, for example because it looks like a smartwatch, highlighter, phone case, or other object; and so forth.
 - ii. This evaluation is not a flavor ban but rather considers whether, taken as a whole, the applicant ESD is meant to appeal to legal adult consumers or is aimed at youth.
 - iii. This continues the State's long-standing interest in halting youth targeting advertising for nicotine-containing products, which began with the State's case against Big Tobacco in the late 90s. That case resulted in the tobacco Master Settlement Agreement in 1998; as a result, nearly all tobacco advertising has ended. The State's commitment continued in suits brought against R.J. Reynolds Tobacco Company to enforce the MSA's advertising bans and restrictions (the Kool Mixx case in 2004 and the Camel Farm Rocks case in 2007), as well as the more recent case that the OAG brought against JUUL, in which the

OAG alleged that JUUL willfully engaging in an advertising campaign that appealed to youth.

c. The OAG would create and maintain a directory of approved ESD products so that ESD businesses know what products they may lawfully purchase and sell in Maryland.

i. Only products listed on the directory can be lawfully sold in the State.

ii. Products not on the directory are deemed contraband and cannot be sold or purchased in the State.

d. The costs of the certification would be borne through application fees paid by the manufacturers, which must pay a fee of \$1,000 for each product they seek to list on the directory.

5. Other provisions that parallel laws for cigarettes

a. Manufacturers must either be Maryland residents or appoint an agent for service of process, which ensures that they are reachable by the OAG if there are any violations of the law.

b. The OAG will also receive regular reports by wholesalers of their ESD sales to ensure that only products on the directory will be sold in Maryland.

c. ESD products that are not on the directory are contraband and can be seized, forfeited, and disposed of.

6. Creates an escrow fund for uncompensated costs of removal and disposal

a. Requires that manufacturers deposit funds to pay for the storage and disposal of dangerous substances if those costs are not otherwise covered.

i. ESDs contain toxic chemicals (nicotine and lithium in most cases) and require special handling to store and dispose. SB0918 adds a requirement that manufacturers deposit funds into an escrow account that can be used by the ATCC to cover unpaid costs of collection and disposing of any ESDs that are taken off the directory or which violate federal, state, or local law.

ii. The amount deposited can be lowered if the ESD products have received FDA marketing orders authorizing sale in the United States.

7. Improved penalties

a. If there is a determination, after notice and a hearing, that someone has possessed, sold, or imported off-directory product or a wholesaler has not made

its required report of sales, the ATCC can seek a monetary penalty or the revocation or suspension of the violator's license.

b. A violation of the directory requirement is also an unfair or deceptive trade practice under Maryland's Consumer Protection Act.

c. There is a personal use exception: anyone who sells, acquires, holds, possesses, transports off-directory product that the person knows or should have known is not on the directory is guilty of a misdemeanor, but these consequences do not apply to someone with \$100 or less worth of ESDs meant for personal use.

8. Other provisions to enable the law to work:

a. Provide process for products that are removed from the directory: OAG may not remove an ESD or manufacturer from the directory until at least 15 days after notice is given to the manufacturer and retailers/vape shop vendors have 15 days to remove the product from inventory and return it to the manufacturer.

b. The OAG or ATCC may promulgate regulations to carry out the new subtitle.

c. There is also a severability provision: if any provision is held invalid, the rest of the subtitle shall be given effect.