

# Maryland Enforcement Primer

## **Table of Contents**

Message from the Legal Resource Center .....	i
Tobacco 21 (T21) Fact Sheet .....	1
T21 provisions.....	1
Youth intervention .....	1
Enforcement .....	2
Local authority.....	2
Sales to those under the age of 21.....	2
Enforcement Statutes: An In-depth Review .....	3
Civil offenses.....	3
Criminal offenses.....	3
Trial.....	3
Hearing .....	3
Fine allocation .....	4
Maryland enforcement statutes .....	4
The Uniform Civil Citation (UCC).....	5
UCC instructions .....	5
UCC sample.....	7
Resident agent search sample and instructions.....	8
Local Laws in Maryland .....	11
Federal, State, and Local Enforcement Programs.....	12
FDA inspections .....	13
Synar checks .....	13
Local enforcement programs .....	13
Tobacco Product Licensing.....	14
Cigarettes and other tobacco products.....	14
Electronic smoking devices.....	14
Additional Sales Restrictions.....	15
Flavored tobacco products.....	15
Packaging and promotions .....	15
Maryland Clean Indoor Air Act.....	16



## **Tobacco 21 Fact Sheet**

“Tobacco 21” (T21) refers to the minimum legal age of sale for all tobacco products in Maryland. As of October 1, 2019, the minimum tobacco sales age increased from 18 to 21. This applied to all tobacco products, including sales of all ESDs—e-cigarettes, vapes, pod devices such as JUUL®, e-liquids, and component parts and accessories. On December 20, 2019, the President of the United States (U.S.) also signed legislation amending the Federal Food, Drug, and Cosmetic Act (FD&C Act), and raising the federal minimum age for sale of tobacco products from 18 to 21 years. It is now illegal in the U.S. to sell tobacco products, including ESDs, to anyone under the age of 21 years.

### **T21 Provisions**

- Maryland’s T21 law increases the legal age of sale of tobacco products from 18 to 21 years.
- Initially, the 2019 Maryland T21 law exempted active duty members of the military who were at least 18 years old and who provided valid military ID upon purchase. However, the federal law does not exempt active duty members of the military. Thus, this provision is no longer enforceable. Retailers may not sell tobacco products, including ESDs, to those under age 21 even if the person is an active-duty member of the military.
- For purposes of the Business Regulation, Criminal Law, and Health-General Articles, the law altered the term “Electronic Nicotine Delivery Systems” to “Electronic Smoking Devices” and defined them as:
  - “A device that can be used to deliver aerosolized or vaporized nicotine to an individual inhaling from the device. It includes an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, and vaping liquid AND 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.” Maryland Code, [Business Regulation, §16.7-101](#)
- For purposes of the Business Regulation, Criminal Law, and Health-General Articles, “Electronic Smoking Devices” are now encompassed in the term “tobacco product.”
- Those under the legal age of sale can no longer be cited for their purchase, use, or possession of these products.
- When issuing a citation pursuant to Health-General, [§24-305](#) (ESDs) or [§24-307](#) (cigarettes and other tobacco products), the retailer/ licensee is now responsible for the civil penalty, whether or not they personally made the illegal sale. The clerk will no longer be responsible for the fine. As a result, and according to a letter issued by the Office of the Attorney General, citations under these sections may be issued to the business owner.

### **Youth Intervention**

There is no law penalizing youth under age 21 for the purchase, use, or possession of tobacco products. In the school setting, if a student is caught using or possessing these products, they may be disciplined in accordance with school policy for violating a rule on campus. These policies will differ between schools and counties. Many local health departments host education and cessation courses and frequently partner with schools and provide these services to students upon referral. More resources may also be found on the MDH Key Resources on E-cigarettes and Vaping site:

<https://phpa.health.maryland.gov/ohpetup/Pages/VapeHelp.aspx>.

## Enforcement

The statutes used for issuing citations remain unchanged.

- [Health-General, §24-305](#) should be used to enforce civil citations for illegal sales of ESDs. Law enforcement, county health officers, or designees of county health officers may issue the citation.
- Only the store owner/licensee is responsible for payment of the fine.
- [Health-General, §24-307](#) should be used to enforce civil citations for illegal sales of tobacco products other than ESDs. Law enforcement, county health officers, or designees of county health officers may issue the citation. Only the store owner/licensee is responsible for payment of the fine.
- [Criminal Law, §10-107](#) should be used to enforce criminal citations for illegal sales of tobacco products (including ESDs) to individuals under the age of 21. Only sworn law enforcement may issue the criminal citation. The clerk, store owner/licensee, or both, may be cited and the party cited is responsible for the payment of the penalty. This section also permits law enforcement to issue a citation to any individual who sells or gives a tobacco product to a person under age 21. For example, a citation may be issued to a high school student who sells a vape device or liquid to another student.
- The fees imposed also remain unchanged. If cited under any of the three statutes ([Health-General, §24-305](#), [§24-307](#), or [Criminal Law, §10-107](#)) the fee schedule is as follows:
  - \$300 for a first violation;
  - \$1000 for a second violation within 24 months of the first violation; and
  - \$3000 for each subsequent violation occurring within 24 months after the preceding violation.

## Local Authority

Local governments with ordinances prohibiting the sale of tobacco products to those under age 18 may continue to enforce these laws. A county is not required to enforce the state law. However, a county may amend its local law to reflect the provisions in the statewide Tobacco 21 law.

For counties that enforce the Local Government Article, [§1-1203- 1-1204](#) (St. Mary's, Cecil, Carroll, and Garrett counties) please note that this law was amended with the statewide Tobacco 21 bill. Thus, if enforcing this law, the legal age of sale is now 21 years.

## Sales to Those under the age of 21

Maryland law prohibits the sale of ALL tobacco products, including tobacco paraphernalia and ESDs or any component or part of an ESD (i.e. any liquid nicotine product commonly referred to as e-juice, e-liquid, or vape juice) to anyone under age 21. Although Maryland law includes language exempting an active duty member of the military who is at least 18 years old and who provides valid military identification, the federal T21 law enacted in December 2019 does not include such an exemption. Therefore, retailers should NOT be selling to anyone under 21 regardless of military status because it is a violation of federal law. Although Maryland is unable to take action against retailers who sell tobacco products to active-duty members of the military under age 21, the FDA may do so. Any violations may be reported to the FDA [here](#).

## **Enforcement Statutes: An In-depth Review**

### **Civil Offenses**

The sale of **ESDs** to those under age 21 is a civil offense and is punishable by:

- First Offense: Fine of up to \$300
- Second Offense: Fine of up to \$1,000 (if within 24 months of a prior violation)
- Additional Offenses: Fine of up to \$3,000 (if within 24 months of a prior violation)

The owner/licensee is responsible for the civil penalty whether or not they made the illegal sale. Other “persons” may also be cited. This includes those who are not licensed.

The sale of **cigarettes or other tobacco products** to an individual under age 21, may also be a civil offense punishable by:

- First Offense: Fine of up to \$300
- Second Offense: Fine of up to \$1,000 (if within 24 months of first violation)
- Additional Offenses: Fine of up to \$3,000 (if within 24 months of a prior violation)

The owner/licensee is responsible for the civil penalty whether or not they made the illegal sale. Other “persons” may also be cited. This includes those who are not licensed.

### **Criminal Offenses**

The sale of cigarettes, other tobacco products, or ESDs to those under age 21 may be a ***criminal misdemeanor***, punishable by:

- First Offense: Fine of up to \$300
- Second Offense: Fine of up to \$1,000 (if within 24 months of first violation)
- Additional Offenses: Fine of up to \$3,000 (if within 24 months of a prior violation)

The owner, licensee, or both may be cited criminally and/or responsible for money penalties. A violation under [Criminal Law, §10-107](#) will be a criminal misdemeanor conviction and will appear on the violator’s criminal record.

*Note: The same transaction/offense may not be prosecuted as both civil and criminal offenses.*

### **Trial**

A person or retailer issued a citation under [Criminal Law, §10-107](#), must appear in Court and either plea to the charge or request a trial. However, a person or retailer cited under Health-General, [§24-305](#) or [§24-307](#), may pay the fine without appearing in Court OR request a trial.

### **Hearing**

All hearings scheduled for any of these alleged violations will take place in the District Court for the county in which the offense took place.

## Fine Allocation

The monetary fines for violating [Criminal Law, §10-107](#) are remitted to the state, whereas any fines collected under Health-General, [§24-305](#) and [§24-307](#) are remitted to the county. Fines collected through civil citations may be used to help fund the local enforcement program.

## Maryland Enforcement Statutes

Law	<a href="#">Section 10-107 of the MD Criminal Law Code</a>	<a href="#">Section 24-305 of the MD Health-General Code</a>	<a href="#">Section 24-307 of the MD Health-General Code</a>
What does the law prohibit?	Distribution and/or sale of tobacco products, including ESDs	Distribution and/or sale of ESDs	Distribution and/or sale of tobacco products
Is this a civil or criminal violation?	Criminal	Civil	Civil
Who can enforce the law?	Sworn Law Enforcement ONLY	Sworn Law Enforcement, a County Health Officer or a designee	Sworn Law Enforcement, a County Health Officer or a designee
Who can be cited?	Licensee, clerk, both or unlicensed person	Licensee or unlicensed person	Licensee or unlicensed person
Potential Penalties	\$300 for a first offense \$1,000 for a second offense if within 24 months \$3,000 for each subsequent offense if within 24 months	\$300 for a first offense \$1,000 for a second offense if within 24 months \$3,000 for each subsequent offense if within 24 months	\$300 for a first offense \$1,000 for a second offense if within 24 months \$3,000 for each subsequent offense if within 24 months
Impact on Criminal Record	Conviction added to Criminal Record	None	None
Trial Required?	Yes	No (Defendant may request)	No (Defendant may request)
Hearing	District Court	District Court	District Court
Fine Allocation	State	County	County

## The Uniform Civil Citation (UCC)

### UCC Instructions

<b>UNIFORM CIVIL CITATION</b>							
<input type="checkbox"/> <b>WITNESS</b>						Citation Number	
<input type="checkbox"/> <b>RELATED CASE # / CITATION(S)</b> ➔							
<b>District Court of Maryland for</b> _____							
Address							
County/Municipality/State of Maryland						Agency	
vs.							
Defendant's (Last) Name		First			Middle		
Current Street Address							Apt. No.
City		County		State		Zip	
DOB		Height		Weight		Sex	
Telephone No. Day/Night:				Race		Hair	
				Eyes			
Based on <input type="checkbox"/> personal knowledge of the undersigned officer <input type="checkbox"/> the attached affidavit, the Defendant is charged with _____							
_____							
_____							
_____ at _____							
Time							
<input type="checkbox"/> AM <input type="checkbox"/> PM on _____ / _____ / _____							
Month Day Year							
at _____							
Location of Offense							
County, MD in violation							
of: <input type="checkbox"/> Md. Ann. Code <input type="checkbox"/> Municipal Infraction/County Ordinance/Public Local Law/Local Code <input type="checkbox"/> COMAR							
Document/Article		Section		Sub Section		Paragraph	
<input type="checkbox"/> Each day a violation continues is a separate infraction subject to an additional citation.							
I sign my name as a receipt of a copy of this Citation and not as an admission of guilt. I will comply with the requirements set forth in this Citation.							
<input checked="" type="checkbox"/> Defendant's Signature _____							
<b>INSTRUCTIONS</b>							
<input type="checkbox"/> <b>YOU MUST APPEAR IN COURT.</b> A notice of trial date will be mailed to you.							
<input checked="" type="checkbox"/> <b>YOU MAY PAY A FINE</b> of \$ _____ (entire amount required) by _____ to the:							
Date							
<input type="checkbox"/> District Court. Payment of the fine will not close the case if abatement action is pending.							
<input checked="" type="checkbox"/> Agency/Municipality _____							
at _____							
Payment Location							
and <b>AVOID TRIAL.</b> This will be deemed an admission of guilt and a trial date will not be set.							
<input checked="" type="checkbox"/> <b>YOU MAY ELECT TO STAND TRIAL</b> by sending your request in writing to the:							
<input type="checkbox"/> District Court							
<input checked="" type="checkbox"/> Agency/Municipality _____							
in writing by _____ at _____							
Date Address							
DO NOT SEND PAYMENT OF FINE. The District Court will mail you a notice of your trial date, time, and location. AT TRIAL the Court may impose a fine up to the maximum allowed by statute plus court costs.							
<input type="checkbox"/> <b>IN ADDITION,</b> _____ is seeking abatement of this infraction.							
Agency/Municipality							
You may be ordered to abate this infraction or be assessed the costs for the abatement, as well as a fine of up to \$1,000, plus court costs. Payment of the preset fine will not satisfy the abatement action and an order of abatement may still be entered against you.							
<input type="checkbox"/> <b>FAILING TO APPEAR OR PAY THE FINE MAY RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST.</b>							
<input checked="" type="checkbox"/> <b>FAILING TO PAY THE FINE OR REQUEST A TRIAL DATE:</b>							
<input checked="" type="checkbox"/> will deem you liable for the fine assessed; the fine may be doubled and/or a judgment on affidavit may be entered against you including an order of abatement;							
<input checked="" type="checkbox"/> you may be found guilty of a Code violation and the maximum fines and costs can be imposed.							
<input type="checkbox"/> <b>FAILURE TO APPEAR FOR A REQUESTED TRIAL DATE:</b>							
<input type="checkbox"/> the fine may be doubled and a judgment on affidavit entered against you;							
<input type="checkbox"/> you may be found guilty of a Code violation and the maximum fines and costs can be imposed.							

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**Citation Number:** Enter citation number, although most are pre-marked.

**District Court of Maryland for:**

Select or write in the County the Court is located in followed by the address of the District Court.

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**If Citing another person:** Enter the defendant's name, address, date of birth and identifying physical features. "Another person" includes those not licensed to sell these products.

**If Citing Store Owner:** Enter the name and contact information for the business listed on license. This may be the name of a person or the name of a business. If the name is listed as a business, the citation must be served by certified mail on the resident agent. The information obtained from the license displayed in the store may be used to locate the resident agent by searching via the Department of Assessments and Taxation Website.

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**Offense:** Check the "personal knowledge of the undersigned officer" box and describe briefly what took place. Include the time, date, and location of the offense. Check the "Md. Ann. Code" box and print the statute "Health-Gen. 24-307 (b)" or "Health-Gen. 24-305(b)."

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The enforcement officer should request the respondent's signature. Inability to obtain his/her signature will not prevent the citation from being processed. For example, if the store owner is not present in the store, the signature need not be obtained. Service in this instance should be effectuated on the resident agent unless the name listed on the license appears as a person's name and not a business name. In either case, the signature need not be obtained in order to properly issue and serve the citation.

**Agency/Municipality & Trial:** Enter the date that the fine is due along with the name and address of your health department and the date by which election to stand trial must be made. Check and complete all blue highlighted boxes and lines. Note that in this example the fine is due 30 days after the infraction, however, you are not required to use the 30 day timeframe and may include additional time if you wish. (For example, you may require payment within 45 or 60 days of the infraction.) The date by which the respondent must pay the fine or request a trial date, however, must take place 5 days before the date in which the fine is due.

Check and complete all blue highlighted boxes and lines.

UCC Sample

123456

**UNIFORM CIVIL CITATION**

☐ WITNESS

☐ RELATED CASE # / CITATION(S)

District Court of Maryland for Calvert County

175 Main Street

Prince Frederick, Maryland 20678

County/Municipality/State of Maryland

**Defendant's (Last) Name** Doe **First** John **Middle** Q

**Current Street Address** 123 Avenue **Apt. No.** 123

**City** Prince Frederick **County** Calvert **State** MD **Zip** 20678

**DOB** 2/20/1975 **Height** 5'9 **Weight** 215 **Sex** M **Race** White **Hair** Brown **Eyes** Blue

**Telephone No. Day/Night:** \_\_\_\_\_ **E-mail:** \_\_\_\_\_

Based on ☒ personal knowledge of the undersigned officer ☐ the attached affidavit, the Defendant is charged with distributing a tobacco product to a minor.

\_\_\_\_\_ at 12:00 ☐ AM ☒ PM on 10 / 01 / 2010

at Tobacco Store on 456 Road in Prince Frederick, MD 20678

Calvert Location of Offense \_\_\_\_\_ County, MD in violation of: ☐ Md. Ann. Code ☐ Municipal Infraction/County Ordinance/Public Local Law/Local Code ☐ COMAR

Health-Gen Section 24-307 Sub Section b Paragraph \_\_\_\_\_

☐ Each day a violation continues is a separate infraction subject to an additional citation.

I sign my name as a receipt of a copy of this Citation and not as an admission of guilt. I will comply with the requirements set forth in this Citation.

☒ Defendant's Signature \_\_\_\_\_

**INSTRUCTIONS**

☐ YOU MUST APPEAR IN COURT. A notice of trial date will be mailed to you.

☒ YOU MAY PAY A FINE of \$ 300 (entire amount required) by 11/01/19 to the: \_\_\_\_\_

☐ District Court. Payment of the fine will not close the case if abatement action is pending.

☒ Agency/Municipality Calvert County Health Department

at 975 Prince Solomons Road, Prince Frederick, MD 20678

and AVOID TRIAL. This will be deemed an admission of guilt and a trial date will not be set.

☒ YOU MAY ELECT TO STAND TRIAL by sending your request in writing to the: \_\_\_\_\_

☐ District Court

☒ Agency/Municipality Calvert County Health Department

in writing by 10/27/19 at 975 Prince Solomons Road, Prince Frederick, MD 20678

DO NOT SEND PAYMENT OF FINE. The District Court will mail you a notice of your trial date, time, and location. AT TRIAL the Court may impose a fine up to the maximum allowed by statute plus court costs.

☐ IN ADDITION, \_\_\_\_\_ is seeking abatement of this infraction.

You may be ordered to abate this infraction or be assessed the costs for the abatement, as well as a fine of up to \$1,000, plus court costs. Payment of the preset fine will not satisfy the abatement action and an order of abatement may still be entered against you.

☐ FAILING TO APPEAR OR PAY THE FINE MAY RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST.

☒ FAILING TO PAY THE FINE OR REQUEST A TRIAL DATE:

☐ will deem you liable for the fine assessed; the fine may be doubled and/or a judgment on affidavit may be entered against you including an order of abatement;

☐ you may be found guilty of a Code violation and the maximum fines and costs can be imposed.

☐ FAILURE TO APPEAR FOR A REQUESTED TRIAL DATE:

☐ the fine may be doubled and a judgment on affidavit entered against you;

☐ you may be found guilty of a Code violation and the maximum fines and costs can be imposed.

I solemnly affirm under the penalties of perjury, and based upon personal knowledge or the attached affidavit, that the contents of this citation are true and that I am competent to testify on these matters.

☒ The Defendant is not now in the military service, as defined in the Servicemembers Civil Relief Act.

## Resident Agent Search Sample and Instructions

*What name should appear next to “Defendant” in the Uniform Civil Citation if citing the owner?*

When citing an owner for illegal sales of tobacco products or ESDs, the name of the retailer/licensee should appear next to “Defendant” on the civil citation. This may be a person’s name such as “John Smith” or instead may be the name of a business. You will never include the name of the Resident Agent on the citation itself.

*How should I “serve” the owner if they are not on the premises during the illegal sale?*

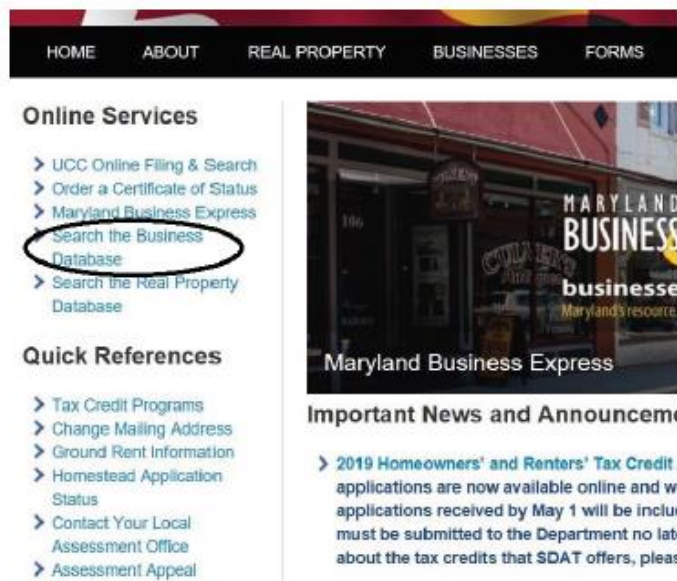
The owner need not sign the citation where “Defendant’s Signature” appears. In order to serve an owner who is listed as a person like “John Smith,” you may send the citation by certified mail, restricted delivery, and return receipt requested to that person directly at the address of the retail location. Maryland Code, [Maryland Rule, §3-121](#). However, if the name on the license is a business, you must serve the Resident Agent by sending the citation certified mail, restricted delivery, and return receipt requested. Maryland Code, [Maryland Rule, §3-124](#).

*What is a “Resident Agent?”*

A Resident Agent is a person or company that agrees to accept service on behalf of a business if legal action is taken. The Resident Agent only accepts service and cannot be cited for the wrongdoing which took place at the retail establishment. “Accepting service” means the Resident Agent has agreed to be notified on behalf of a business owner that a legal proceeding has been filed against that business. The Resident Agent will never be responsible for payment of the fine. This is not a rule specific to tobacco citations or enforcement, but is the required practice when a company is asked to respond to a legal action.

*How do I locate the Resident Agent?*

In order to locate the Resident Agent, review the tobacco, other tobacco product, or ESD license at the retail location. Next, visit <https://dat.maryland.gov> and select “search the business database” as displayed below.



Next, enter the name displayed on the tobacco, Other Tobacco Product (OTP), or ESD license into the “Business Name” field. In the following example, the business name is “NAI Saturn Eastern LLC.”

90 Walkersville

State of Maryland  
*Licence*

10335716  
30610916  
31789831

18

NAI SATURN EASTERN LLC  
SAFEWAY #123  
P.O. BOX 29046  
MS 65731  
REVENUE AZ 87030

NAI SATURN EASTERN LLC  
SAFEWAY #123  
131 WALKERSVILLE WAY  
WALKERSVILLE MD 21793

CODE	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
75	810 SPECIAL RETAIL CIGARETTE	1	30.00	
87	790 RESTAURANT	1	30.00	
98	805 VENDING MACHINE	1	7.50	
97	804 OTHER TOBACCO PROD RETL	1	0.00	
01	671 CHAIN STORE	1	123.59	
71	751 TRADER'S LICENSE	1	300.00	
74	825 CIGARETTE	1	25.00	
ISSUING FEES				14.00
TOTAL				1,010.09

THIS LICENSE MUST BE PROMINENTLY DISPLAYED  
AND EXPIRES ON **APRIL 30, 2019**

19196-1321902

SANDRA DALTON, CLERK OF CIRCUIT COURT  
100 WEST PATRICK STREET  
FREDERICK, MARYLAND 21701

Click the “search” function. In this example, the following page will appear:

Maryland.gov

MARYLAND BUSINESS EXPRESS

Registrations & Filings

Business Entity Search

Business Name: NAI Saturn Eastern LLC

Search by: ☒ Business Name ☐ Department ID

Now select “View Business Details.” The following page will appear. To locate the Resident Agent, refer to the information contained in the black box below.

View Living History Annual Reports/Personal Property

Information

Department ID Number: 2060416

Business Name: NAI SATURN EASTERN LLC

Principal Office: 250 PARKCENTER BLVD  
BOWEN MARLBOROUGH

Resident Agent: THE CORPORATION TRUST, INCORPORATED  
2400 VORHARDT ROAD  
SUITE 200  
LUTHERVILLE THOMAS MD 21052-0004

STATUS: ACTIVE

Good Standing: THIS BUSINESS IS IN GOOD STANDING  
a Order Certificate of Status

Business Type: FOREIGN LLC

Business Code: 20 ENTITIES OTHER THAN CORPORATIONS

Date of Formation/Registration: 03/15/2004

State of Incorporation: DE

Stock Status: N/A

*What if I am unable to serve the Resident Agent?*

If two good faith attempts on two separate days to serve the resident agent have failed, you may serve the State Department of Assessments and Taxation by certified mail, restricted delivery, return receipt requested. Maryland Code, [Maryland Rule, §3-124](#).

*What if the license is not displayed in the establishment and I am unable to gather information to issue the citation and locate the Resident Agent?*

The license should be displayed prominently. If it is not, notify the Alcohol Tobacco Commission to determine whether that retailer has a license. If they do, obtain the license information and follow the procedure for issuing the citation, including serving the Resident Agent if appropriate. If the retailer does not have a license, report this to the Alcohol Tobacco Commission. Even in this scenario, you may still issue a criminal citation to a licensed or unlicensed person pursuant to [Criminal Law, §10-107\(c\)](#) for selling a tobacco product, including an ESD to a person under 21. You may instead choose to issue a civil citation to a licensed or unlicensed “person” pursuant to [Health General, §24-305](#) if the sale was for an ESD. You may not, however, issue a civil citation to an unlicensed person if the sale was for a non-ESD tobacco product.

**Local Laws in Maryland\***

Local Penalties for Sales to Individuals under 18	Local Penalties for Sales to Individuals under 21	Self-Service Tobacco
<p><b>Kent County</b>  <i>Owners</i> – fines of \$300 for first violation and \$500 for subsequent violations within 24 months  <i>Others</i> – fines of \$50 for first violation and \$100 for subsequent violations within 24 months</p> <p><b>Montgomery County</b>            Fine up to \$1,000 for first offense and \$1,000 for subsequent offenses</p> <p><b>Prince George’s County</b>  <i>Owners</i> – fines of up to \$300 for first violation and up to \$1,000 for subsequent violations  <i>Employees</i> – fines of up to \$50 for first violation and \$100 for subsequent violations</p>	<p><b>Baltimore City</b>            Fine of up to \$1,000 for each offense</p> <p><b>Carroll County</b>            \$300 fine for first violation            \$500 fine for subsequent violations within 24 months</p> <p><b>Cecil County</b>            \$300 fine for first violation            \$500 fine for second violation            \$750 fine for subsequent Violations</p> <p><b>Garrett County</b>            Fine of up to \$300</p> <p><b>St. Mary’s County</b>            \$300 fine for first violation            \$500 fine for subsequent violations within 24 months</p> <p><b>Baltimore County</b>            \$500 fine for first violation            \$1,000 fine for second violation            \$1,500 for subsequent violation</p> <p><b>Howard County</b>            \$500 for first violation            \$1,000 for a second violation occurring within 24 months</p>	<p>The following local jurisdictions require all tobacco products, not including ESDs, to be placed in a location inaccessible to customers and impose civil penalties for violations:            Baltimore City            Baltimore County*            Carroll County            Charles County            Garrett County            Harford County            Howard County            Kent County            Montgomery County            Prince George’s County            Talbot County            Wicomico County</p> <p>*Baltimore County is the only jurisdiction which requires ESDs be placed in a location inaccessible to the public.</p>
<p>*For more information on local tobacco laws in Maryland, visit <a href="https://mdtobaccolaws.org/">https://mdtobaccolaws.org/</a> or <a href="https://health.maryland.gov/notobaccosalestominors/Pages/Home.aspx">https://health.maryland.gov/notobaccosalestominors/Pages/Home.aspx</a></p>		

### **Federal, State, and Local Enforcement Programs**

Federal, state, and local laws restrict the sale of tobacco products and electronic smoking devices (ESDs), to individuals based upon their age. These laws also authorize enforcement programs to monitor retailer compliance and penalize establishments that illegally offer to sell tobacco products and ESDs. In Maryland, federal, state, and local authorities monitor approximately 6,000 licensed tobacco, other tobacco product, and ESD retailers and enforce laws against violators. The three primary enforcement programs operating in the State are: (1) FDA inspections, (2) Synar checks, and (3) local enforcement programs.

The chart below summarizes each enforcement program, including, the authorizing statute, the enforcing agency, penalties, and types of tobacco products subject to each program.

CATEGORY	SYNAR	FDA	STATE/LOCAL
Source of Law	Alcohol, Drug Abuse, and Mental Health Admin Reorganization Act ( <a href="#">Synar Amendment</a> )	<a href="#">Family Smoking Prevention and Tobacco Control Act</a>	Md. Code, <a href="#">Crim. Law §10-107</a> ; <a href="#">Health-General §24-305</a> ; <a href="#">Health-General §24-307</a> or County ordinance
Number of Checks	10% random sample statewide conducted between May-September annually	Undisclosed; random and targeted	Varies by jurisdiction
Enforcement Entity	Maryland Department of Health, Center for Tobacco Prevention and Control	Maryland Department of Health, Center for Tobacco Prevention and Control staff are deputized by the FDA	Health Officer or designee, or sworn law enforcement
Penalties	No penalty for retailers. State risks losing substance abuse prevention and treatment block grant dollars if the violation rates exceed 20%.	1 <sup>st</sup> Violation – warning letter 2 <sup>nd</sup> Violation in 12 mos. - \$297 3 <sup>rd</sup> Violation in 24 mos. - \$594 4 <sup>th</sup> Violation in 24 mos. - \$2,381 5 <sup>th</sup> Violation in 36 mos. - \$5,952 6 <sup>th</sup> Violation in 48 mos. - \$11,904  No Tobacco Sales Orders – may be issued against a retailer found to have committed repeat violations at a particular outlet.	Varies by jurisdiction \$300-\$3,000
Covered Products	MD Synar checks cigarettes <b>only</b> , but others may be checked in the future.	Cigarettes, Smokeless Tobacco, Cigars, Hookah, ESDs	Cigarettes, Smokeless Tobacco, Cigars, Hookah, ESDs

**FDA Inspections**

The U.S. Food and Drug Administration monitors compliance with the Family Smoking Prevention and Tobacco Control Act, including illegal sales to minors. FDA inspections can result in a warning letter, a civil fine up to \$11,904 as of January 2020 or a no-tobacco sale order. In 2019, more than 2,500 Maryland retailers were subject to FDA inspections. 2020 numbers are not used because they are skewed by the COVID-19 pandemic that prevented inspections for a portion of 2020.

**Synar Checks**

The Synar Amendment, adopted by Congress in 1992, requires states to reduce youth access to tobacco products as a condition of receiving Substance Abuse Prevention and Treatment block grant funding from the Substance Abuse and Mental Health Services Administration (SAMHSA). States can lose up to 10% of the block grant funding if more than 20% of retailers fail random, unannounced inspections. In Maryland, a random, 10% statewide sample of licensed tobacco retailers is checked each year.

**Local Enforcement Programs**

Each of Maryland's 24 counties (including Baltimore City) monitor illegal tobacco sales and conduct regular inspections of licensed tobacco, other tobacco product, or ESD retailers. Local enforcement programs are commonly jointly led by the county health department and the county police or sheriff's department. Enforcement officials may issue criminal citations (Md. Code [Crim. Law §10-107](#)) or civil citations (Md. Code Health-Gen. [§24-305](#) and [§24-307](#)) to violators. In addition, the Alcohol Tobacco Commission may reprimand, suspend, or revoke the cigarette, other tobacco product, or ESD license for repeat violators. A repeat violation may refer to a combination of FDA, Synar, and local compliance failures.

## **Tobacco Product Licensing**

### **Cigarettes and OTP**

To sell tobacco in Maryland, a retailer must obtain a county tobacco retailer license. The type of license required (i.e. cigarette or other tobacco products) depends on the products sold. Licenses can be obtained by applying to the County Clerk at the Circuit Court in the jurisdiction where the business is located and paying the applicable fee. A Retail Cigarette License has an initial application fee of \$200 and is thereafter \$30 annually to the state and \$25 annually to the county of each place of business (except Cecil County which is \$50 annually and Montgomery County which is \$125 annually).

A Retail Other Tobacco Products License is \$15 annually; however, this fee is not required when a business holds a Retail Cigarette License. Licenses must be clearly displayed in the place of business and renewed by April 30th each year. A retail tobacco license may be suspended or revoked for illegal tobacco sales to minors. Store owners and employees may also face fines and criminal sanctions for illegal tobacco sales to minors.

### **Electronic Smoking Devices (ESDs)**

To sell ESDs in Maryland, retailers must also obtain a license through the Office of the County Clerk at the Circuit Court in the jurisdiction where the business is located but not if they already have a cigarette or OTP license. Regardless of whether a retailer is required to obtain an ESD license, the retailer must comply with all requirements of an ESD licensee.

The application fee is \$25. Licenses must be renewed by April 30th each year for a \$25 fee. Licenses must also be clearly displayed in the place of business. Just as with the retail tobacco license, electronic smoking device licenses may be suspended or revoked for illegal sales. Additionally, owners and employees may be subject to civil fines and criminal sanctions.

### **Additional Sales Restrictions**

#### **Flavored Tobacco Products**

The sale of flavored cigarettes (excluding menthol and tobacco flavors) is prohibited under federal law. Additionally, in January of 2020, the FDA announced that within 30 days companies were to cease the manufacture, distribution, and sale of flavored (other than tobacco and menthol) cartridge-based ESDs which have not been approved for premarket authorization. It also announced that it would focus enforcement efforts on:

- **All** other ESD products for which the manufacturer has failed to take (or is failing to take) adequate measures to prevent minors' access; and
- **Any** ESD product that is targeted to minors or likely to promote use of ENDS by minors.

All federal violations may be reported to the FDA online:

<https://www.accessdata.fda.gov/scripts/ptvr/index.cfm>

The sale of clove cigarettes in Maryland is a criminal misdemeanor punishable by a fine of \$500. Additionally, the [Maryland Office of the Comptroller announced in February of 2020](#) that all wholesalers and retailers must cease the sale and marketing of cartridge-based and disposable ESD products containing flavors, other than tobacco flavor and menthol flavor, which have not been approved for FDA's premarket authorization. These violations may be reported to the Alcohol Tobacco Commission. Retailers who continue to sell cartridge-based and disposable flavored ESDs which also contain CBD may be reported to the Alcohol Tobacco Commission. Although the Commission does not have authority to regulate CBD or cannabis, it may take action if the product also meets the definition of the prohibited products referenced in the Comptroller's order.

#### **Packaging and Promotions**

Cigarettes may ONLY be sold in packages of at least 20. Sale or distribution of unpackaged cigarettes is punishable by a fine of \$500 and up to 3 months imprisonment. No manufacturer, distributor, or retailer may distribute free samples of cigarettes, smokeless tobacco, or other tobacco products, except for smokeless tobacco in a qualified adult-only facility.

## **Maryland Clean Indoor Air Act**

### **What is the Clean Indoor Air Act?**

The Maryland Clean Indoor Air Act prohibits smoking in virtually all indoor workplaces in Maryland. The law provides for fair and consistent statewide protection from exposure to secondhand smoke in indoor settings.

### **What products are prohibited to be smoked inside under the Clean Indoor Air Act?**

This law prohibits the act of smoking in most public places. “Smoking” is defined as the “the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco.” Therefore, it applies to cigarettes, cigars, pipes, and hookah. It does NOT apply to electronic smoking devices (ESDs) or to heat-not-burn tobacco products (currently, iQOS is the only heat-not-burn tobacco product on the market).

### **What locations are smoke-free under the Clean Indoor Air Act?**

A person may not smoke in: (1) an indoor area that is open to the public, including bars and restaurants; (2) a government-owned or operated mass transportation vehicle such as a bus, van, train, taxi, or limousine; or (3) an indoor place of employment. Indoor areas open to the public include portions of indoor areas accessible to the public by either invitation or permission. “Place of employment” is defined in [§5-101 of the Labor and Employment Article](#) as a “place in or about which an employee is allowed to work.”

### **Exemptions to the Clean Indoor Air Act**

The Clean Indoor Air Act does not apply to:

- Private homes or residences, including residences used as a business or place of employment (unless being used by a person who is licensed to provide child care);
- Private vehicles unless a childcare or healthcare provider is using the vehicle to transport the child;
- Hotel or motel rooms as long as the total percent of hotel or motel rooms being so used does not exceed 25%;
- Retail tobacco businesses in which the primary activity is the retail sale of tobacco products and accessories and the sale of other products is incidental;
- Any facility of a manufacturer, importer, wholesaler, or distributor of tobacco products or of any tobacco leaf dealer or processor in which employees of the manufacturer, importer, wholesaler, distributor, or processor work or congregate; or
- A research or educational laboratory for the purpose of conducting scientific research into the health effects of tobacco smoke.

### **How does the Clean Indoor Air Act apply to multiunit dwellings?**

The Clean Indoor Air Act prohibits smoking in common areas, hallways, and stairwells because these are indoor places of employment. It does not apply to the individual units because these are private homes and residences. However, landlords and management companies may decide to include smoke-free provisions in their leases which prohibit smoking in private units. Homeowners Associations may also choose to implement bylaw amendments prohibiting smoking on all or some of their properties, including individual units so long as they follow the required process and procedure outlined in their

bylaws as well as the Maryland Condominium Act. For more information on smoke-free housing in Maryland, please visit <https://www.mdsmokefreeapartments.org/>.

Note: Effective July 31st, 2018 Housing and Urban Development (HUD) required all Public Housing agencies (PHAs) to implement and enforce smoke-free policies on their properties.

#### **What is the “retail tobacco business” exception?**

The “retail tobacco business” exception permits smoking on the premises of retail establishments where the “primary activity” is the retail sale of tobacco products and the sale of other products is “incidental.” There currently are not specific regulations to further define the meaning of “primary activity” or “incidental” sales. If there are questions as to whether a particular location is a retail tobacco business and subject to the retail tobacco business exception, please contact MDH at 1-866-703-3266 or your [local health department](#).

#### **What should I do if I see someone smoking in violation of the Clean Indoor Air Act?**

Anyone who sees a violation of the law may file a complaint with the local health department in which the violation took place or call the Clean Indoor Air Act hotline at 1-866-703-3266 to leave an anonymous complaint.

#### **Penalties**

A person who violates a provision of the Act faces penalties as follows:

- For a first violation, the Secretary or Secretary’s designee will issue a written reprimand;
- For a second violation, a civil penalty of \$100; and
- For a subsequent violation, a civil penalty not less than \$250.

#### **Local Clean Indoor Air Laws**

In addition to the state Clean Indoor Air Act, several counties and Baltimore City have also enacted similar laws:

- *Baltimore City*: Smoking is prohibited in enclosed areas open to the public and in enclosed areas which are places of employment. “Smoking” includes the use of traditional tobacco products or ESDs. See Health Code, §§12-105 – 12-107.
- *Baltimore County*: Smoking is prohibited in public places and at public meetings. Smoking does not include the use of ESDs. See §§13-8-101 – 13-8-109.
- *Cecil County*: Tobacco use, which includes ESDs, is prohibited in any County Parks and Recreation owned or leased property. See §§261-5 – 261-6.
- *Charles County*: Smoking is prohibited in all enclosed public places. “Smoking” does not include the use of ESDs. See Article 1, §§127-1 – 127-6.
- *Frederick County*: Smoking tobacco products is prohibited in public buildings owned or controlled by the county. See §§1-11-3 and 1-11-14.
- *Harford County*: Smoking is prohibited in county buildings. “Smoking” does not include ESDs. See §§149-8 – 149-15.

- *Howard County*: Smoking, including the use of an ESD, is prohibited within a distance of 15 feet from public places and enclosed public places of employment. See §§12-601 – 12-608.
- *Montgomery County*: Smoking and the use of ESDs is prohibited in any common area in a multiple-family residential dwelling. A law passed in 2019 prohibits smoking in outdoor serving areas, not including golf courses or eating and drinking establishments that have designated a smoking/vaping space in an outside seating area that is a rooftop or balcony. See §24-9 for additional information.
- *Prince George’s County*: Smoking, which includes the use of ESDs is prohibited in eating and drinking establishments. See §§19-130 – 19-134.
- *Talbot County*: Smoking is prohibited in all enclosed public places and workplaces. “Smoking” includes the burning of tobacco products, but not the use of ESDs. See §§159-4 – 159-11.

**This Primer was developed by the Legal Resource Center for Public Health Policy in consultation with the Maryland Department of Health**