



## Citations, Fines, and ATCC Actions on Licenses for Underage Sales

### Civil Citations

A civil citation for tobacco sales to an underage consumer (i.e., under 21 years old) may be issued to a retail licensee (which may be an individual or a business entity) or to a clerk under Health-General §§ 24-305 (Electronic Smoking Devices [ESDs]) or 24-307 (cigarettes, other tobacco products [OTP], and ESDs). The licensee may be cited regardless of whether the sale was made by the licensee directly or by a clerk. Regardless of who made the sale, the licensee is responsible for the civil penalty; even if the clerk is cited, the licensee must pay the fine. Because the licensee is responsible for the fine even for a clerk's sale, it is more efficient and effective to cite the licensee. This is because the licensee will be served the citation and notice to appear in court. Citing the licensee also allows for more accurate collection of data on repeat violations from the same licensed location, expediting referral to the Alcohol, Tobacco, and Cannabis Commission (ATCC) for license suspension or revocation.

If a licensee or clerk is cited under Health-General § 24-305 or § 24-307, a citation for the same sale may not be issued under Criminal Law § 10-107.

#### Who may issue a civil citation?

The Secretary of the Maryland Department of Health, the Secretary's designee, a sworn law enforcement officer, a county health officer, or a designee of a county health officer may issue a civil citation pursuant to Health-General §§ 24-305 or 24-307. This allows local health department staff to issue citations if designated by the local health officer. Law enforcement officers may issue civil citations under the Health-General provisions or criminal citations under the Criminal Law provisions; some law enforcement officers may not be aware of this civil citation authority because they typically issue criminal citations.

#### Civil Fines

A licensee that violates Health-General §§ 24-305 or 24-307 is subject to a civil penalty not exceeding:

- \$300 for a first violation;
- \$1,000 for a second violation occurring within 24 months after the first violation; and
- \$3,000 for each subsequent violation occurring within 24 months after the preceding violation.

#### Where does the money go?

Fines should be paid to the county in which the violation occurred. If a person chooses to pay the fine without a trial, that payment should be made to the county directly. If a person elects to stand trial, the District Court should remit any penalties to the county in which the violation occurred but the county is not required to use the remittance for tobacco control purposes.

# Criminal Citations

A criminal citation for tobacco sales to an underage consumer may be issued to a retail licensee (which may be an individual or a business entity) or to a clerk under Criminal Law § 10-107 (tobacco products and tobacco paraphernalia). The licensee may be cited regardless of whether the licensee or the clerk made the sale. Unlike the civil citations, if a clerk is cited, the clerk must pay the fine. Best practices state it is more effective to cite the licensee rather than the clerk as the licensee is responsible for training and supervising staff to [prevent underage sales](#). The licensee can put policies in place and purchase equipment to prevent underage sales; a clerk cannot. Therefore, it is more efficient and effective to cite the licensee. This is because the licensee will be served the citation and notice to appear in court and be prompted to make broad changes that would impact all staff. Citing the licensee also allows for more accurate data collection on repeat violations from the same licensed location, expediting referral to the ATCC for license suspension or revocation under the new provisions in Criminal Law § 10-107.

If a licensee or clerk is cited under Criminal Law § 10-107, a citation for the same sale may not be issued under Health-General §§ 24-305 or 24-307.

## Who may issue a criminal citation?

A sworn law enforcement officer.

## Criminal Penalties

A licensee that violates Criminal Law § 10-107 is guilty of a criminal misdemeanor and may be subject to a fine not exceeding:

- \$500 for a first violation;
- \$1,000 for a second violation occurring within 2 years after the first violation; and
- \$3,000 for each subsequent violation occurring within 2 years after the preceding violation.

As explained below, Criminal Law § 10-107 requires the District Court to mandate license suspension or revocation in certain circumstances, in addition to the fines.

## Where does the money go?

The fines are remitted to the State.

## What is tobacco paraphernalia?

Criminal Law § 10-101 defines tobacco paraphernalia as “any object used, intended for use, or designed for use in inhaling or otherwise introducing tobacco products into the human body.” Examples include cigarette rolling paper, a water pipe, a carburetion tube or device, a roach clip, and a bong.

# Both Civil and Criminal Citations

## What if the name on the license is a business name and not the name of a person?

If the name on the license is a business, you must serve the Resident Agent (RA) for the business. An RA is a person or company that is contracted by the business to be notified of legal proceedings brought against the business (this is called accepting service). The RA is not responsible for coming to court, communicating with the governmental entity that issued the citation, or paying the fine; the RA is simply accepting the citation

through the mail as a representative of the business. To locate the RA for a business that owns the license for a retail establishment where an underage tobacco sale occurred, visit the [Maryland Business Express](#) page and click on “Business Entity Search.” If a business does not show up through the Business Entity Search, contact the Alcohol, Tobacco, and Cannabis Commission. Maryland Rule §§ 3-121 and 3-124 directs you to send the citation via certified mail, restricted delivery, and return receipt requested.

### **Alcohol, Tobacco, and Cannabis Commission (ATCC) Action**

Maryland Code, Business Regulation Article §§ 16-210, 16.5-210, and 16.7-209 give the Executive Director of the ATCC the authority to deny a license to an applicant, reprimand a licensee, suspend a license, or revoke a license. The Tobacco Retail Modernization Act of 2024 (TRL) requires license suspension or revocation based on repeat violations for citations issued under Criminal Law § 10-107. Specifically, Criminal Law § 10-107 now requires the District Court to order the Executive Director of the ATCC to:

- Suspend the license for up to 90 days upon a second violation;
- Suspend the license for up to 180 days for each subsequent violation; and
- Revoke the license for each subsequent violation.

This means that if a licensee pleads or is found guilty of two violations within a two-year period, the District Court must order the ATCC to issue a suspension for up to 90 days; for a third violation that occurs within two years of the second violation, the suspension can be up to 180 days. The 180 days also applies to violations after the third. It is unclear whether the District Court will order the ATCC to suspend for a specific period of time within the 90 or 180 days permitted or will allow the ATCC to determine the suspension period.

The ATCC may issue a license suspension or revocation for repeat violations based on: (1) civil citations under the Health-General provisions; (2) civil citations issued under federal law (citations issued under the authority of the Food and Drug Administration [FDA]); (3) local law; (4) Synar compliance check failure, or; (5) any combination of the above. Under current ATCC policy, a licensee may be subject to license suspension or revocation based on two or more underage sales within a 12-month window. The ATCC requires that at least one of the sales resulted in a finding of guilt on a criminal citation (whether a guilty plea or finding of guilt by a court) or a finding that the person cited is legally responsible for the violation listed on the state, local, or federal civil citation (whether by paying the fine voluntarily, after a finding of liability by a court, or issuance of a fine by the FDA). The other violation may have the same outcome or can simply be the issuance of a criminal or civil citation without final resolution. The ATCC has issued guidance on when and how to refer a business in its [Tobacco Compliance Bulletin 24-002](#).

### **Overview of Criminal vs. Civil Citations**

<b>Law</b>	<b>Section 10-107 of the MD Criminal Law Code</b>	<b>Section 24-305 of the MD Health-General Code</b>	<b>Section 24-307 of the MD Health-General Code</b>
<b>What does the law prohibit?</b>	Distribution and/or sale of tobacco products, including ESDs	Distribution and/or sale of ESDs	Distribution and/or sale of tobacco products, including ESDs
<b>Is this a civil or criminal violation?</b>	Criminal	Civil	Civil
<b>Who can enforce the law?</b>	Sworn law enforcement officer	MDH Secretary or designee, sworn law enforcement officer,	MDH Secretary or designee, sworn law enforcement officer,

		county health officer or designee	county health officer or designee
<b>Who can be cited?</b>	Licensee, clerk, both, or unlicensed person	Licensee, clerk, both, or unlicensed person	Licensee, clerk, both, or unlicensed person
<b>Potential penalties?</b>	\$500 for a first offense \$1,000 for a 2 <sup>nd</sup> offense within 24 months \$3,000 for each subsequent offense within 24 months	\$300 for a first offense \$1,000 for a 2 <sup>nd</sup> offense within 24 months \$3,000 for each subsequent offense within 24 months	\$300 for a first offense \$1,000 for a 2 <sup>nd</sup> offense within 24 months \$3,000 for each subsequent offense within 24 months
<b>Impact on criminal record?</b>	Conviction added to criminal record	None	None
<b>Trial required?</b>	Yes	No (defendant may request one)	No (defendant may request one)
<b>Where is the hearing held?</b>	District Court	District Court	District Court
<b>Fine Allocation?</b>	State	County	County