



Federal regulations continued

Advertising and Promotion

- It is prohibited to offer any gift or item to a person purchasing cigarettes or smokeless tobacco in consideration of (a) the purchase of tobacco products; or (b) providing evidence of such purchase, such as credits, proof-of-purchase, or coupons – *21 C.F.R. §1140.34(b)*
- It is prohibited to sponsor any athletic, musical, artistic, or other social or cultural event – or any entry or team in any event – that is identified with a brand of cigarettes or smokeless tobacco – *21 C.F.R. §1140.34(c)*

Violations and Penalties

- There are two schedules for civil money penalties for retailers who violate the Tobacco Control Act. Escalating fines can be in excess of \$10,000 and repeat violators may be subject to a no-tobacco-sale order.

Resources

- **Tobacco 21 Retailer information**
www.NotobaccoSalesToMinors.com
- **Comptroller of Maryland**
www.comp.state.md.us
- **FDA Center for Tobacco Products**
www.fda.gov/TobaccoProducts/default.htm
- **Maryland Department of Health Center for Tobacco Prevention and Control**
https://phpa.health.maryland.gov/ohpetup/Pages/tob_home.aspx
- **Maryland Synar Reports (State tobacco retailer compliance checks)**
<https://bha.health.maryland.gov/Pages/Maryland-Synar-Reports.aspx>
- **Office of the Maryland Attorney General**
www.marylandattorneygeneral.gov/Pages/Tobacco
- **University of Maryland Legal Resource Center for Public Health Policy**
www.law.umaryland.edu/programs/publichealth
- **The Maryland Tobacco Quitline, 1-800-QUIT-NOW**
www.SmokingStopsHere.com

Maryland laws

Sale and Distribution

- Tobacco products may only be sold to individuals age 21 or older. Electronic Smoking Devices (ESDs) are now included within the definition of “tobacco products” and are defined as devices that can be used to deliver aerosolized or vaporized nicotine to an individual inhaling from the device. These include electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, electronic hookahs, vape pens, vaping liquid and any component, part, or accessory regardless of whether or not it is sold separately, including any substance intended to be aerosolized or vaporized during use of the device. – *Md. Ann. Code Crim. Law §10-107, Md. Ann. Code Health Gen. §24-305, Md. Ann. Code Health Gen. §24-307, Md. Ann. Code Health Gen. §13-1001, Md. Ann. Code Bus. Reg. §16.7-101*
- The sale of tobacco products in vending machines is prohibited unless the vending machine is located in an adult-only establishment – *Md. Ann. Code Bus. Reg. §16-3A-02*
- Cigarettes may only be sold in packages of at least 20 – *Md. Ann. Code Comm. Law §11-5A-02*
- The sale of clove cigarettes is prohibited – *Md. Ann. Code Crim. Law §10-106*
- The Office of the Comptroller announced on February 10, 2020, that retailers and wholesalers were to cease sales and marketing of flavored disposable ESDs or face sanctions including suspension and/or revocation of licensure.

Violations and Penalties

- Sale or distribution of a tobacco product, including Electronic Smoking Devices (ESDs) to a person under age 21: The clerk or licensee (or both) may be subject to a criminal misdemeanor and a fine up to:
\$300 for a first violation;
\$1,000 for a second violation within two years of the first violation;
\$3,000 for each subsequent violation occurring within two years of preceding violation – *Md. Ann. Code Crim. Law §10-107*
- Sale or distribution of a tobacco product, including Electronic Smoking Devices (ESDs) to a person under age 21: The licensee/owner, not the clerk, may be subject to a civil penalty up to:
\$300 for a first violation;
\$1,000 for a second violation within two years of the first violation; and
\$3,000 for each subsequent violation occurring within two years of preceding violation – *Md. Ann. Code Health Gen. §24-305 and Md. Ann. Code Health Gen. §24-307*
- Sale of unpackaged cigarettes: a retailer that distributes an unpackaged cigarette is guilty of a criminal misdemeanor and is subject to a fine up to \$500, imprisonment for up to three months, or both – *Md. Ann. Code Comm. Law §11-5A-02*

No person under the age of 21 may be sold tobacco products.

Licensing requirements

Retailers selling cigarettes, other tobacco products, or Electronic Smoking Devices (ESDs), such as e-cigarettes, vapes, or pod-based systems like JUUL®, must secure a license from the clerk of the Circuit Court for the jurisdiction in which the retailer is located. Licenses expire on April 30 and must be renewed annually.

- If a retailer sells cigarettes, they must obtain a license to do so.
- If a retailer sells cigarettes and other tobacco products, they must obtain an endorsement to sell other tobacco products (at no additional cost), in addition to the requisite cigarette license.
- If a retailer sells other tobacco products and does not sell cigarettes, they must obtain a specific license to do so.
- If a retailer sells cigarettes or other tobacco products, they do not need to obtain an additional license to sell ESDs.
- If a retailer sells electronic smoking devices and does not have a license to sell cigarettes or other tobacco products, they must obtain the appropriate license to sell ESDs.

Violations and Penalties

- Selling or distributing tobacco products or ESDs without the appropriate licensure is a criminal misdemeanor subject to a fine up to \$1,000 and/or imprisonment up to 30 days – *Md. Ann Code Bus. Reg §16.7-211(b)(1), Md. Ann Code Bus. Reg §16.5-218, Md. Ann Code Bus. Reg §16-214(b)(1)-(2)*

Laws and penalties are subject to change.

Visit www.NotobaccoSalesToMinors.com for the most up-to-date information.



Federal fines can be in excess of **\$10,000.**

Federal regulations

On June 22, 2009, the President signed the Tobacco Control Act into law. The Tobacco Control Act grants FDA authority to regulate the manufacturing, marketing, and distribution of tobacco products to protect public health and to reduce tobacco use by young people. The FDA originally only regulated cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco products. However, effective Aug. 8, 2016, the FDA began regulating the following tobacco products: ESDs, all cigars (including premium), hookah (waterpipe tobacco), pipe tobacco, nicotine gels, and dissolvables.

On December 20, 2019, the Federal, Drug, and Cosmetic Act was amended to raise the minimum legal sales age for any retailer to sell a tobacco product from 18 to 21 years of age, implementing a Federal Tobacco 21 Law. The amendment does not include any exemptions (therefore voiding Maryland's military exemption) or grandfathering of age groups.

ID Check

- Tobacco products, including ESDs may only be sold to individuals age 21 or older* – *21 C.F.R. §140.16(c)*
- Retailers **MUST** check photo ID of everyone under age 27 who attempts to purchase any tobacco product, including ESDs* – *21 C.F.R. §140.14(b)(2)* *A retailer may be cited for selling to a person without checking ID if he/she appears under age 27. MDH anticipates the Secretary of HHS to promulgate regulations that would increase this age to under 30.

Sale and Distribution

- Federal law requires cigarettes and smokeless tobacco products be sold only in face-to-face transactions. Although there is no equivalent Maryland law, several counties and Baltimore City require face-to-face transactions for the sale of ALL tobacco products – *21 C.F.R. §1140.16(c)*
- Effective February 2, 2020, the FDA began implementing its enforcement policy, limiting the sale, manufacturing, and distribution of flavored (not including menthol or tobacco flavor), cartridge based ESDs as well as all ESDs in which the manufacturer has no taken adequate measures to prevent youth access and/or ESDs targeted to minors or likely to promote youth use.
- The sale of any tobacco product, including ESDs, in vending machines is prohibited unless the vending machine is located in an adult-only establishment – *21 C.F.R. §1140.16(c)*
- Cigarettes may only be sold in packages of at least 20 – *21 C.F.R. §1140.16(b)*
- Breaking or opening packages of smokeless tobacco to sell in any quantity smaller than the smallest package distributed by the manufacturer for individual use is prohibited – *21 C.F.R. §1140.14(d)*
- Retailers may not distribute free samples of tobacco products (excluding free samples of smokeless tobacco in a "qualified adult-only facility") or offer gifts with the purchase of any tobacco product – *21 C.F.R. §1140.16(d)(1)*
- The sale of flavored cigarettes (excluding menthol) is prohibited – *21 U.S.C. 387g*
- Retailers are required to alter self-service displays so that all transactions involving cigarettes or smokeless tobacco are face-to-face and do not allow for the opening of any cigarette or smokeless tobacco package – *21 C.F.R. §1140.14(a)(5)*

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