

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 842

(Senator Beidle)

Finance

Economic Matters

**Electronic Smoking Devices - Seizure and Wholesaler Record-Keeping
Requirements**

This bill authorizes the Executive Director of the Alcohol, Tobacco, and Cannabis Commission (ATCC), without a warrant, to seize electronic smoking devices (ESD) that are sold or offered for sale in violation of Title 16.7 of the Business Regulation Article. The bill establishes procedures for notice of seizure and filing a claim for the return of seized ESD, including the requirement for a hearing. The bill also repeals the authority of an ESD manufacturer to sell ESD to a consumer and establishes recordkeeping requirements for ESD wholesaler distributors and wholesaler importers. The Executive Director may adopt regulations to implement the bill.

Fiscal Summary

State Effect: ATCC can implement the bill's requirements related to seizure of ESD, including hearing procedures, with existing resources, as discussed below. Revenues are not affected.

Local Effect: Local government finances and operations are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Notice of Seizure

The Executive Director must give notice of a seizure to the person from whom the 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 ESD with the Executive Director within 30 days after seizure. A person forfeits any interest in, right to, or title to seized ESD if the person fails to timely file a claim for return.

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

Responsibility for Costs and Penalties

A person who possessed or offered for sale seized 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 ESD.

Electronic Smoking Devices Manufacturer License

The bill repeals the authority of the holder of an ESD manufacturer license to sell ESD to a consumer if the license holder manufactured the devices and the consumer purchases or orders the devices through the mail, a computer network, or another electronic network.

Recordkeeping Requirements for Wholesaler Distributors and Wholesaler Importers

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

Current Law: The Business Regulation Article governs the licensing of ESD manufacturers, wholesalers, and retailers. ATCC issues manufacturer and wholesaler 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 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 Distributors and Wholesaler Importers

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.

Electronic Smoking Devices Manufacturers

Statute specifies that an ESD manufacturer (1) manufactures, mixes, or otherwise produces ESD intended for sale in the State, including ESD intended for sale in the United States through an importer; (2) sells ESD to a consumer (as specified), a licensed ESD wholesaler distributor, or a licensed ESD wholesaler importer in the State; (3) if the ESD manufacturer also holds a license to act as an ESD retailer or vape shop vendor, sells ESD in the same manner as a vape shop vendor to consumers located in the State; and (4) unless otherwise prohibited or restricted, distributes sample ESD to a licensed ESD retailer or vape shop vendor.

An ESD manufacturer license authorizes the licensee to sell ESD to (1) a licensed ESD wholesaler located in the State; (2) an ESD wholesaler or retailer located outside the State if the ESD may be sold lawfully in Maryland; (3) a licensed vape shop; and (4) a consumer if the licensee manufactured the devices and the consumer purchases or orders the devices through the mail, a computer or telephonic network, or another electronic network.

Seizure of Other Tobacco Products

Section 13-835 of the Tax-General Article authorizes the Comptroller, the Executive Director of ATCC, or a peace officer of the State to seize contraband tobacco products in the State without a warrant. Notice of the seizure must be given to the person from whom the property is seized at the time of the seizure. 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. If a person files a claim for return

of seized 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.

State Expenditures: As ATCC enforces current statutory provisions related to seizure of contraband other tobacco products, any additional enforcement duties for seizure of ESD under the bill, including holding hearings, can be implemented with existing resources.

Additional Comments: The bill requires the Executive Director to issue a license to an applicant that meets the requirements for an ESD wholesaler license; however, provisions for establishing the license are not included in the bill. Furthermore, the bill repeals the authority of the holder of an ESD manufacturer license to sell ESD to consumers but does not amend the definition of ESD manufacturer to remove parallel language.

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; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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