

# Federal, State and Local Tobacco Control Laws

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# Overview

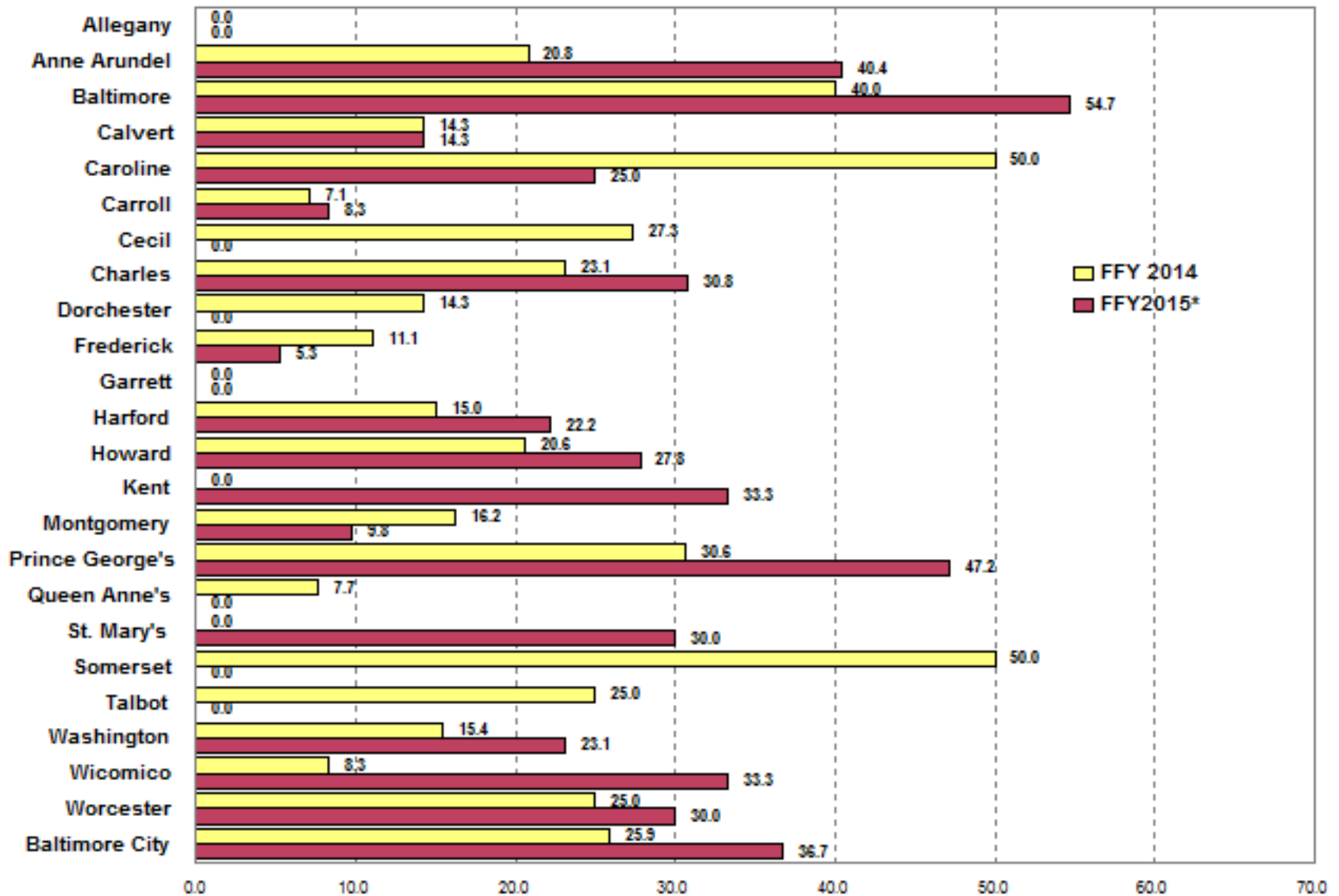
- ▶ Importance of Local Compliance Checks
- ▶ Sources of Tobacco Control Law
- ▶ Federal and State Tobacco Laws
- ▶ Local Authority to Regulate Tobacco

	Synar	FDA	Local
<b>Source of Law</b>	Synar Amendment to the Alcohol, Drug Abuse and Mental Health Admin. Reorganization Act (Public Law 102-321)	Family Smoking Prevention and Tobacco Control Act, Section 102  21 C.F.R. §1140.14	Maryland Code, Criminal Law §10-107  County Ordinance
<b>Requirements</b>	<ul style="list-style-type: none"> <li>• Enact/Enforce tobacco sales to minors laws</li> <li>• 10% random sample of each jurisdiction</li> <li>• Retailer Violation Rate of 20% or less</li> </ul>	<ul style="list-style-type: none"> <li>• Prohibit sale of cigarettes/smokeless tobacco to minors</li> <li>• Face to face transactions</li> <li>• ID Check under 27</li> <li>• Labeling and advertising restrictions</li> </ul>	<ul style="list-style-type: none"> <li>• Prohibit sale of all tobacco products to minors</li> <li>• Sale of unpackaged cigarettes</li> </ul>
<b>Who Enforces the Law?</b>	Behavioral Health Admin., Statewide Projects Tobacco Staff and a minor	FDA commissioned officer and a minor (16-17 yr. old)	Law Enforcement  Health Officer or designee
<b>Penalties</b>	None	Violation letter and civil money penalties	Misdemeanor and fine up to \$300, \$1,000 and \$3,000
<b>Referral to Comptroller</b>	Yes	Yes	Yes

# Importance of Local Compliance Checks

- ▶ **Local compliance checks do not factor into SYNAR compliance rates, but greatly impact retailer behavior**
- ▶ **Reported Retailer Violation Rates**
  - **FY09** – **5.1%** (Last year of statewide funding for local compliance inspections)
  - **FY10** – 16.8% (Highest rate in U.S.)
  - **FY11** – 17.0% (3<sup>rd</sup> Highest rate in U.S.)
  - **FY12** – 17.3% (2<sup>nd</sup> highest rate in U.S.)
  - **FY13** – 16.8% (2<sup>nd</sup> highest rate in U.S.)
  - **FY14** – 24.1% (Highest rate in U.S.)
- ▶ **National Average FY09–FY13 → 9.48%**

**Maryland SYNAR Retailer Violation Rates by Retailer County**  
**Behavioral Health Administration**  
**FFY 2014 and FFY 2015\***



\*FFY 2015 figures are preliminary

# Sources of Law

- ▶ Tobacco control governed by federal, state and local laws:
  - Family Smoking Prevention and Tobacco Control Act
  - Maryland Code
    - Criminal Law Article §10–107
    - Health–General §24–305
  - County Ordinances
  
- ▶ Tobacco retailers must abide by all laws, but law enforcement may only enforce state and local laws

# Who is in Charge of Tobacco Control?

Tobacco control authority is shared between federal, state and local authorities:

- **Federal**
  - FDA
  - SAMHSA
  - Alcohol and Tobacco Tax and Trade Bureau
- **Maryland**
  - DHMH (CTPC and BHA)
  - Office of the Comptroller
- **Local**
  - County Health Department
  - Local Law Enforcement
  - Other Executive Agencies (i.e. Dept. of Liquor Control)

# Types of Tobacco Sales Laws

- ▶ Sales to Minors
- ▶ ID Check
- ▶ Product Placement
- ▶ **Packaging**
- ▶ **Licensing**
- ▶ **Excise Tax**
- ▶ Samples
- ▶ Product Restrictions (i.e. Flavored ban)



# Federal and State Law

# Federal Law vs. Maryland Law

	Federal Law	Maryland Law
Age to Purchase	18 (for cigarettes and smokeless tobacco)	18 (for all tobacco products)
ID Check	Required for anyone under 27	–
Vending Machines	Only in 18+ establishments	Only in 18+ establishments
Self-Service Displays	Banned (for cigarettes and smokeless tobacco)	–
Packaging	Ban sale of unpackaged cigarettes	Ban sale of unpackaged cigarettes
Licensing	–	Required (\$25)
Excise Tax	<ul style="list-style-type: none"> <li>• \$1.01 per pack</li> <li>• Varying rates per/lb. (OTP)</li> </ul>	\$2.00 per pack 15%–70% (OTP)
Samples	No Free Samples	No Free Samples
Product Restrictions	<ul style="list-style-type: none"> <li>• Flavored cigarette ban</li> <li>• No “Light,” “Mild,” &amp; “Low” labels</li> </ul>	–

# What Can Local Authorities Issue Citations for?

## Maryland Law

- ▶ **Sale or Distribution of a Tobacco Product to a Minor**
  - Misdemeanor and fine up to \$300 (1<sup>st</sup>) \$1,000 (2<sup>nd</sup>) and \$3,000 (3+)
- ▶ **Sale of Unpackaged Cigarettes**
  - Misdemeanor and fine up to \$500 or up to 3 months imprisonment (or both)
- ▶ **Sale of Electronic Cigarettes**
  - Misdemeanor and fine up to \$1,000
- ▶ **Vending Machines**
  - 18+ establishment and operated by token/card purchased from establishment
  - Misdemeanor and fine up to \$100
- ▶ **Youth Possession/False ID**
  - Civil penalty
- ▶ **Sale of Clove Cigarettes**
  - Misdemeanor and fine up to \$500

# What Can Local Authorities NOT Issue Citations for?

- ▶ Failure to Check ID (except Baltimore County)
- ▶ Self-Service Displays (No state law)
- ▶ Sale of Flavored Cigarettes
- ▶ Sale of tobacco products with “reduced harm” claims (i.e. light, mild, low)
- ▶ Licensing, Taxation and Minimum Cost Violations

# Comptroller Authority

Local authorities may notify Office of the Comptroller of the following violations:

- ▶ **No Maryland Tax Stamp**
- ▶ **No Cigarette and/or OTP license**
- ▶ **Sales Below Minimum Cost**
- ▶ **Issuance of Sales to Minors Violations**

# Notifying the Comptroller

- ▶ The Comptroller has the authority to reprimand, suspend and revoke cigarette and other tobacco product licenses
- ▶ Repeat violators should be referred to the Comptroller for disciplinary hearings
  - FDA and state/local inspection check violations qualify
  - Sales to minors violations only
- ▶ A law enforcement officer or health official must provide testimony at the disciplinary hearing
- ▶ Referrals to the Comptroller should include:
  - Letter describing violation
  - Copy of citation
  - Proof of fine payment/court record

# Local Laws



# Local Authority

- ▶ Three types of local government in Maryland: Commissioner, Code and Charter
- ▶ Carroll and Garrett sought local authority to levy civil penalties for tobacco sales to minors from the Maryland General Assembly
- ▶ Allegany and Frederick have the authority to adopt local ordinances making tobacco sales to minors a civil violation
- ▶ Washington County must seek legislation in General Assembly
- ▶ **Local Tobacco Ordinances by Jurisdiction:**
  - Sales to Minors – Carroll and Garrett
  - Product Placement – Carroll and Garrett
  - Sales to Minors (Electronic Cigarettes)
  - ID Check
  - Flavored Wrappings
  - Sales of Unpackaged Cigarettes





# Who may conduct local compliance checks?

- ▶ **Law Enforcement** → Every jurisdiction allows law enforcement to enforce state (criminal) and local (civil) tobacco control laws
- ▶ **Health Officer or Designee** → Most jurisdictions with local tobacco control ordinances grant authority to Health Officers and/or their staff
- ▶ **Other Local Agencies** → Several jurisdictions designate specific agencies or enforcement officials to conduct inspections

# Questions?