Overview

- Importance of Local Compliance Checks
- Sources of Tobacco Control Law
- Federal and State Tobacco Laws
- Local Authority to Regulate Tobacco
- Frequently Asked Questions (FAQs)
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% (3rd Highest rate in U.S.)
  - FY12 – 17.3% (2nd highest rate in U.S.)
  - FY13 – 16.8% (2nd highest rate in U.S.)
  - FY14 – 24.1% (Highest rate in U.S.)

- National Average FY09–FY13 → 9.48%
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

<table>
<thead>
<tr>
<th></th>
<th>Federal Law</th>
<th>Maryland Law</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Age to Purchase</strong></td>
<td>18 (for cigarettes and smokeless tobacco)</td>
<td>18 (for all tobacco products)</td>
</tr>
<tr>
<td><strong>ID Check</strong></td>
<td>Required for anyone under 27</td>
<td>–</td>
</tr>
<tr>
<td><strong>Vending Machines</strong></td>
<td>Only in 18+ establishments</td>
<td>Only in 18+ establishments</td>
</tr>
<tr>
<td><strong>Self-Service Displays</strong></td>
<td>Banned (for cigarettes and smokeless tobacco)</td>
<td>–</td>
</tr>
<tr>
<td><strong>Packaging</strong></td>
<td>Ban sale of unpackaged cigarettes</td>
<td>Ban sale of unpackaged cigarettes</td>
</tr>
<tr>
<td><strong>Licensing</strong></td>
<td>–</td>
<td>Required ($25)</td>
</tr>
<tr>
<td><strong>Excise Tax</strong></td>
<td>• $1.01 per pack</td>
<td>$2.00 per pack</td>
</tr>
<tr>
<td></td>
<td>• Varying rates per/lb. (OTP)</td>
<td>15%–70% (OTP)</td>
</tr>
<tr>
<td><strong>Samples</strong></td>
<td>No Free Samples</td>
<td>No Free Samples</td>
</tr>
<tr>
<td><strong>Product Restrictions</strong></td>
<td>• Flavored cigarette ban</td>
<td>–</td>
</tr>
<tr>
<td></td>
<td>• No “Light,” “Mild,” &amp; “Low” labels</td>
<td>–</td>
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</tbody>
</table>
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 (1st) $1,000 (2nd) and $3,000 (3+)

- **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 Unpackaged Cigarettes
- Sale of Flavored Cigarettes
- Sale of tobacco products with “reduced harm” claims (i.e. light, mild, low)
- Licensing, Taxation and Minimum Cost Violations
If you can’t issue a citation, what can you do?
Local authorities may notify Office of the Comptroller of the following violations:

- No Maryland Tax Stamp
- Sales of Unpackaged Cigarettes
- 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

Contact:
- Ron Gallant, Division Manager
- 410–260–7716
- rgallant@comp.state.md.us

Referrals to the Comptroller should include:
- Letter describing violation
- Copy of citation
- Proof of fine payment/court record
Special Case of E-Cigarettes
Electronic Cigarettes are **NOT** tobacco products under Federal or Maryland law.

FDA proposed a rule that would deem e-cigarettes as tobacco products, **BUT**
- The rule has not been finalized
- State and local law enforcement *may not* enforce federal tobacco regulations

Maryland law (Health–Gen, §24–305) establishes a criminal misdemeanor for the sale of electronic cigarettes to minors.

Since sales to minors is a criminal violation, only may be enforced by law enforcement.

So how should e-cigarettes be treated during enforcement inspections?
So What is the Difference?

Definitions

- **Tobacco Product** → Any substance containing tobacco, including cigarettes, cigars, smoking tobacco, snuff, smokeless tobacco and candy-like products that contain tobacco
- **Electronic Nicotine Device** → an electronic device that can be used to deliver nicotine to the individual inhaling from the device, including an electronic cigarette, cigar, cigarillo or pipe

State Law

- **Tobacco Product – Criminal Law §10–107**
  - Misdemeanor
  - Escalating fine schedule from $300 (1st) to $1,000 (2nd) to $3,000 (3rd or more)
- **Electronic Nicotine Device – Health–General §24–305**
  - Misdemeanor
  - Fine of up to $1,000 for each violation
# E–Cigarettes vs. Tobacco Products

<table>
<thead>
<tr>
<th></th>
<th>Electronic Nicotine Device</th>
<th>Tobacco Product</th>
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</thead>
<tbody>
<tr>
<td><strong>Age to Purchase</strong></td>
<td>18 (does not include liquid nicotine cartridge)</td>
<td>18</td>
</tr>
<tr>
<td><strong>Penalty</strong></td>
<td>Fine up to $1,000</td>
<td>Escalating Fine Schedule ($300, $1,000 and $3,000)</td>
</tr>
<tr>
<td><strong>Youth Possession</strong></td>
<td>–</td>
<td>Civil Penalty</td>
</tr>
<tr>
<td><strong>Criminal vs. Civil Citation</strong></td>
<td>Criminal*</td>
<td>Criminal or Civil*</td>
</tr>
<tr>
<td><strong>Authority to Enforce</strong></td>
<td>Law Enforcement</td>
<td>Law Enforcement, Health Officer (or designee) or Other Agency</td>
</tr>
<tr>
<td><strong>Product Placement</strong></td>
<td>–</td>
<td>Varies by Jurisdiction</td>
</tr>
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Local Laws
Three types of local government in Maryland: Commissioner, Code and Charter

Commissioner (Somerset) must seek local authority to levy civil penalties for tobacco sales to minors from the Maryland General Assembly (Calvert County seeking authority this session)

Charter and Code (Caroline, Dorchester, Queen Anne’s, Talbot, Wicomico and Worcester) may adopt a local ordinance making tobacco and/or e-cigarette sales to minors a civil violation
  ◦ 7 other counties in MD have adopted local ordinances

**Local Tobacco Ordinances by Jurisdiction**:
- Sales to Minors – Kent
- Product Placement – Kent
- Sales to Minors (Electronic Cigarettes)
- ID Check
- Flavored Wrappings
- Sales of Unpackaged Cigarettes
Issuing the Citation
Who may conduct local compliance checks?

- **Law Enforcement** → Every jurisdiction allows law enforcement to enforce state (criminal) and local (civil) tobacco control and e-cigarette 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
Who receives the citation?
## Civil vs. Criminal

<table>
<thead>
<tr>
<th>Where are these laws found?</th>
<th>Criminal</th>
<th>Civil</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maryland Code (criminal law article)</td>
<td>County Code (health article)</td>
<td></td>
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<tr>
<th>Who may enforce?</th>
<th>Criminal</th>
<th>Civil</th>
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<tr>
<td>Law Enforcement</td>
<td>Law Enforcement, Health Officer (or designee), other designated agency</td>
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<tr>
<th>Is trial required?</th>
<th>Criminal</th>
<th>Civil</th>
</tr>
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<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td></td>
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<table>
<thead>
<tr>
<th>On criminal record?</th>
<th>Criminal</th>
<th>Civil</th>
</tr>
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<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td></td>
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<tr>
<th>Where do collected fines go?</th>
<th>Criminal</th>
<th>Civil</th>
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<tbody>
<tr>
<td>Maryland General Fund</td>
<td>Kept by local jurisdiction</td>
<td></td>
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<th>Can violators be referred to the comptroller?</th>
<th>Criminal</th>
<th>Civil</th>
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<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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</table>
Who receives the citation?
Clerk vs. Licensee

Who may receive a citation for sales to minors?
- Owner (licensee) and/or Clerk
- Law prohibits the distribution of tobacco products to a minor
- Distribute means to “give, sell, deliver, dispense, issue,” or “cause or hire a person to give, sell, deliver, dispense, [or] issue”
- Courts more likely to uphold citations for licensee

Who may receive a citation for product placement violations?
- **ONLY** owner/licensee subject to product placement penalty
Additional Steps
Additional Steps

**What else can you do to reduce tobacco sales to minors?**

- **Education**
  - In-person merchant education
  - Media-led public education campaign
  - Youth education (health class/youth groups)
  - Judges/Prosecutors

- **Vendor Letter**

- **Non-enforcement compliance checks**

- **Youth Involvement**

- Collect data on tobacco licenses, violations and adjudications

- Provide violation information to Comptroller

- Collaborate with Merchant/Retailer Associations
Questions?

PRESENTER

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