



DEPARTMENT OF HEALTH

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Secretary

July 5, 2022

The Honorable Bill Ferguson
President of the Senate
H-107 State House
Annapolis, MD 21401-1991

The Honorable Adrienne Jones
Speaker of the House
H-101 State House
Annapolis, MD 21401-1991

Re: Ch. 773 of the Acts of 2017 (HB 185) and HG §24-307(f) - 2019 Annual Legislative Report on Tobacco Enforcement Strategies

Dear President Ferguson and Speaker Jones:

Pursuant to Health-General Article, §24-307(f), Annotated Code of Maryland, the Maryland Department of Health (MDH) is directed to submit this annual legislative report on tobacco enforcement strategies. Specifically, the report includes information on: (1) the development of strategies for the enforcement of the Criminal Law Article §§10-107 and 10-108 Annotated Code of Maryland; and (2) training and assistance to tobacco retailers to improve compliance with §10-107 of the Criminal Law Article. It should be noted that Criminal Law Article § 10-108 was repealed in 2019 and is no longer applicable to this report.

If you have any questions about this report, please contact Director of Governmental Affairs, Heather Shek, at (410) 767-6481 or heather.shek@maryland.gov.

Sincerely,

Dennis R. Schrader
Secretary

cc: Heather Shek, JD, MS, Director, Governmental Affairs
Jinlene Chan, MD, MPH, FAAP, Deputy Secretary, Public Health Services
Donna Gugel, MHS, Director, Prevention and Health Promotion Administration
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**2019 Annual Report on Enforcement Strategies for Distribution of Tobacco
Products to Minors and Compliance Training and Assistance to Tobacco
Retailers**

2019 Annual Report

Larry Hogan
Governor

Boyd Rutherford
Lieutenant Governor

Statutory Authority and Requirements:

Health-General Article, §24-307(f), Annotated Code of Maryland requires the Maryland Department of Health to report to the General Assembly each year on the status of ongoing strategies for enforcement of §§10-107 and 10-108 of the Criminal Law Article, which aim to limit the availability of tobacco products to minors and ensure retailer compliance with youth access laws.

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Introduction

As required by Chapter 773 of the Acts of 2017 (HB 185) – Department of Health and Mental Hygiene – Distribution of Tobacco Products to Minors – Prohibition and Enforcement, this report provides the General Assembly with an annual update on the ongoing strategies for enforcement of §§10-107 and 10-108 of the Criminal Law Article, Annotated Code of Maryland. These activities are conducted by the Maryland Department of Health (MDH), in collaboration and consultation with the Office of the Comptroller (Comptroller), local health departments, and local law enforcement agencies. Specifically, this report details:

1. The development of enforcement strategies prohibiting distribution to and possession of tobacco products by minors (§§10-107 and 10-108 of the Criminal Law Article, Annotated Code of Maryland).
2. Training and assistance to tobacco retailers to improve compliance with §10-107 of the Criminal Law Article.

Information contained in this report was compiled from the above entities and highlights programmatic activities and policies that help limit the availability of tobacco products to minors and ensure retailer compliance with youth access to tobacco (youth access) laws.

Background

Enforcement, education, and training related to federal, State, and local laws that restrict youth access to tobacco products are conducted through the MDH Prevention and Health Promotion Administration's Center for Tobacco Prevention and Control (CTPC) and the Comptroller. MDH provides retailer outreach, education, and training; local inspections through local health departments; federal Substance Abuse and Mental Health Services Administration (SAMHSA) Synar Program State inspections; and federal Food and Drug Administration (FDA) inspections. The Comptroller conducts hearings and issues warnings, license suspensions, and revocations to repeat violators.

In February 2019, the MDH Behavioral Health Administration's Tobacco Cessation and Compliance section was merged into CTPC (hereafter the merged centers are collectively referred to as MDH). The merged centers allow for strategic coordination of processes and procedures related to tobacco enforcement.

As a condition of the SAMHSA Substance Abuse Prevention and Treatment Block Grant, MDH must comply with the federal Synar Amendment, adopted in 1992. The Synar Amendment requires states to enact and enforce laws prohibiting the sale or distribution of tobacco products to minors. To comply with this amendment, MDH conducts random unannounced inspections of tobacco

retail outlets and vending machines annually to ensure adherence to Maryland's prohibition on the sale of tobacco products to minors. Findings from these inspections are reported to SAMHSA each federal fiscal year (FFY). States must maintain a retailer violation rate (RVR) of 20 percent or less or be penalized by losing up to 40 percent of their Substance Abuse Prevention and Treatment Block Grant funds, which is more than \$13,500,000 for Maryland.

Maryland's RVR was 24.1 percent in FFY 2014 and 31.4 percent in FFY 2015, exceeding the allowable threshold of 20 percent. SAMHSA offered Maryland an alternative penalty to the reduction in funding: the full Substance Abuse Prevention and Treatment Block Grant funding would be maintained if Maryland allocated an additional \$1,387,390 in new State funds for retailer education and enforcement activities in State fiscal year (SFY) 2015 and \$3,860,126 in additional State funds in SFY 2016.

Due to coordinated enforcement and training efforts by MDH, the Comptroller, and local health departments, Maryland retailers have been back in compliance with the Synar Amendment since FFY 2016. The most recent RVR calculated for Maryland in FFY 2019 was 8.5 percent.

To sustain the success of statewide efforts to reduce youth access to tobacco, and avoid costly penalties that could jeopardize State substance use treatment dollars, Governor Hogan created a Tobacco Enforcement line item in the Cigarette Restitution Fund budget for approximately \$2,000,000 beginning in SFY 2017. These dedicated funds are crucial to maintain enforcement efforts and to keep the RVR below the 20 percent threshold.

Recent State legislation and federal regulations have also helped strengthen and support tobacco enforcement efforts in Maryland and are outlined below. *Note: Two pieces of legislation (HB 1169 and HB 1052) that will impact future retailer compliance efforts were passed by the General Assembly during the 2019 Legislative Session. These bills are effective in SFY 2020 and did not impact activities for SFY 2019. See the "Ensuring Future Compliance" section of this report for further information.*

- Chapter 425 of the Acts of 2015 (HB 489) - Electronic Cigarettes – Sale to Minors – Components, Supplies, and Enforcement, effective October 1, 2015: This bill amends the State's prohibition against selling electronic nicotine delivery systems (ENDS) to minors by (1) expanding the scope of the ban to include refillable containers of liquid nicotine and other component parts; (2) authorizing a local health officer or designee to cite violators; (3) allowing violators to pay a fine in lieu of standing trial; and (4) exempting products that are sold as FDA-approved tobacco cessation devices from the prohibition.
- Chapter 814 of the Acts of 2017 (HB 523) - Electronic Nicotine Delivery Systems and Vaping

Liquid – Licensing, effective October 1, 2017: This bill requires a special license for all businesses that mix or sell ENDS or vaping liquids, regardless of whether products contain nicotine. This includes manufacturers, wholesalers, storage warehouses, retailers, and vape shop vendors. ENDS retailers who already hold a cigarette or other tobacco products license are subject to the ENDS license provisions but are not required to obtain an additional license. ENDS licenses are issued by the Clerk of the Circuit Court in each jurisdiction. The Comptroller may suspend or revoke a license for unlicensed transactions, including illegal sale of ENDS or vaping liquid to minors. Any business operating without an appropriate license is guilty of a criminal misdemeanor and subject to a fine of up to \$1,000 and imprisonment of up to 30 days, or both.

- Chapter 773 of the Acts of 2017 (HB 185) - Department of Health and Mental Hygiene - Distribution of Tobacco Products to Minors - Prohibition and Enforcement, effective October 1, 2017: This bill establishes civil money penalties for distributing tobacco products, paraphernalia, and coupons to minors. HB 185 supplements, but does not replace, the existing criminal provisions for these violations. The bill also permits non-law enforcement personnel to issue the civil money penalties and establishes certain reporting requirements for MDH and the Comptroller.
- Chapter 785 of the Acts of 2018 (HB 1094) - Distribution of Electronic Cigarettes to Minors – Prohibitions and Penalties, effective October 1, 2018: This bill aligns statute regarding ENDS with current laws covering other tobacco products by criminalizing the sale or distribution of ENDS to minors (Criminal Law Article, §10-107, Annotated Code of Maryland). The bill also creates penalties for use, possession, and purchase of ENDS by minors (Criminal Law Article, §10-108, Annotated Code of Maryland); strengthens existing civil penalties for the distribution of ENDS to minors; and explicitly permits sworn law enforcement officers to issue civil citations to those who distribute tobacco products to minors.
- FDA’s Deeming Rule¹, effective 2016: The Deeming Rule extends FDA’s regulatory authority to tobacco products not previously covered, including cigars, hookah, pipe tobacco, nicotine gels, dissolvables, and e-cigarettes [also known as ENDS and electronic smoking devices (ESDs), and all terms that refer to products such as Juuls, vapes, vape pens, e-cigars, and e-hookahs. The term ESD will be used throughout the remainder of this document to cover all of these categories].

The Deeming Rule restricts youth access by: (1) not allowing tobacco products to be sold to minors and requiring age verification via photo identification to purchase; and (2) not allowing tobacco products to be sold in vending machines unless the machine is in an adult-only

¹ 21 CFR 1100, 21 CFR 1140, 21 CFR 1143, Accessed 15July2019 at <https://www.regulations.gov/docket?D=FDA-2014-N-0189>

facility. The Deeming Rule also requires health warnings on roll-your-own tobacco, cigarette tobacco, and newly regulated tobacco products, and bans free samples of tobacco products, except for smokeless tobacco in a “qualified adult-only facility.” In 2018 and 2019, FDA advanced several policy proposals that may impact the Deeming Rule. These proposals include: (1) prohibiting the sale of fruit and candy-flavored ESDs from most retail and online stores; (2) banning ESD marketing to youth; and (3) advancing the deadline to submit a premarket application to legally sell ESDs by one year to August 8, 2021.²

Development and Success of Enforcement Strategies to Improve Compliance

MDH follows evidence-based recommendations for reducing youth access to tobacco products, which are outlined in “Centers for Disease Control and Prevention Best Practices for Comprehensive Tobacco Control Programs – 2014.”³ These recommendations include: (1) mobilizing the community to restrict minor access to tobacco products, in combination with additional interventions including stronger local laws directed at retailers, active enforcement of retailer sales laws, and retailer education with reinforcement; and (2) conducting mass-media education campaigns, in combination with other community interventions. MDH collaborates with partners and agencies across the State to implement these best practice enforcement strategies. Specific strategies are described below.

Retailer enforcement strategies for §10-107 of the Criminal Law Article

MDH works collaboratively with local health departments, local law enforcement, and the Comptroller to enforce existing laws, educate retailers, and sanction repeat violators through the following new and existing strategies.

A. Using technology to track sales violations through the online Point of Sale Toolkit (POST)

MDH uploads a list issued by the Comptroller each year of over 6,000 tobacco retailer licenses into a data collection and mapping software tool called the Point of Sale Toolkit (POST). POST was developed by Counter Tools (<https://md.countertools.org/>). This program allows real-time data uploads and provides a complete and accurate list of retail locations, which reduces time spent visiting stores that are no longer in business. The program also increases the efficiency of conducting compliance checks, providing face-to-face education, completing assessments of the retail environment, and mailing educational materials that assist retailers to remain in compliance with youth access laws.

POST allows jurisdictions to document individual and aggregate retailer violations over time

² Food and Drug Administration, Modifications to Compliance Policy for Certain Deemed Tobacco Products March 2019, Accessed 15July2019 at <https://www.fda.gov/media/121384/download>

³ Centers for Disease Control and Prevention. Best Practices for Comprehensive Tobacco Control Programs—2014. Atlanta: US Department of Health and Human Services, Center for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014, Accessed 5Aug2019 at https://www.cdc.gov/tobacco/stateandcommunity/best_practices/index.htm

and by violation type (i.e., Synar, FDA, and local or State violations). This helps reduce reporting burdens, provides real-time updates to MDH, and better targets enforcement and education efforts.

As of June 2019, the Maryland POST system had 96 users statewide, representing 22 jurisdictions. Additionally, the Maryland POST system has data for over 30,000 enforcement visits, including nearly 9,000 local health department visits, 18,000 federal FDA compliance checks, and 3,000 State Synar inspection visits.⁴

In the future, POST's integrated mapping tool may be used to display tobacco retail outlet location data, such as proximity to schools or other retail outlets. This tool can help users visualize how health disparities impact a community and provides the ability to target resources to areas with the most need. For example, maps that overlay tobacco retail density with area demographics (race/ethnicity, educational attainment, percent of youth, income levels, and urban versus rural status) can be created.

B. Local inspections through Local Health Departments and Local Law Enforcement

To coordinate enforcement efforts across the State, MDH uses the Comptroller's annual list of licensees to determine jurisdiction-level funding for conducting local enforcement checks. Local health departments work with community partners, youth, law enforcement (when applicable), and local courts to conduct compliance checks and cite retailers that violate youth access laws. In SFY 2019, local health departments conducted 7,175 compliance checks (6,430 for routine surveillance of tobacco retailer, 653 follow-up compliance checks after local citations for tobacco sales to minors, and 92 follow-up compliance checks after failing Synar compliance checks). Local law enforcement agencies issued 479 citations for illegal sales of tobacco products to minors, and local health departments referred 123 tobacco retailers to the Comptroller for multiple or repeat violations in SFY 2019.

C. State inspections through the Maryland Synar Program

To ensure adherence to the federal Synar Amendment, which requires states to enact and enforce laws prohibiting the sale or distribution of tobacco products to minors, MDH conducts annual unannounced inspections on 10 percent of tobacco retail outlets and vending machines. MDH reports findings from these inspections to SAMHSA each FFY.

- MDH uses the Comptroller's list of licensed tobacco retail outlets to obtain a random sample of 10 percent of outlets for each jurisdiction, ensuring that every jurisdiction, including those with a small number of outlets, is included.

⁴ The POST system uses the term "visit" and captures activities as either "enforcement" or "education" visits. Enforcement visits include local, State, and federal inspection data.

- To take advantage of youth inspector availability, inspections take place in April through September, and include over-the-counter purchases as well as purchases from vending machines that are accessible to minors. All Synar inspections must be completed by September 30 of each year.
- Youth inspectors (16 to 17 years of age) conduct Synar inspections, along with an adult inspector.
- MDH uses a consummated buy attempt process for inspections, in which the youth inspector pays for the tobacco product(s) and then exits the store. During the Synar inspection process, youth inspectors have immunity from youth tobacco purchase and possession laws.
- Once the inspection is completed, adult and youth inspectors complete inspection forms, which are given to the MDH Synar Coordinator for analysis. After the analysis is completed, a letter, which includes a link to MDH’s website: www.NoTobaccoSalesToMinors.com, is sent to each inspected tobacco retail outlet regarding their compliance status. Copies of the letters are also sent to local health officers and local health department tobacco coordinators.
- Inspection data are uploaded into the Synar Survey Estimation System, which automatically generates Maryland's RVR. This rate is included in the mandated annual Synar Report that must be submitted to SAMHSA by December 30 of each year.

Following the completion of the statewide Synar compliance inspection cycle, adult inspectors revisit noncompliant tobacco outlets to provide one-on-one training with relevant educational materials. This activity was initiated in 2015 to address rising RVRs and to enhance tobacco retailer compliance with youth access laws. Since FFY 2016, Maryland retailers have remained well under the 20 percent RVR threshold, eliminating the requirement of penalty expenditures.

Maryland Synar Retailer Violation Rate (RVR) by Federal Fiscal Year (FFY)

	FFY 2014	FFY 2015	FFY 2016	FFY 2017	FFY 2018	FFY 2019
RVR	24.1%	31.4%	13.8%	10.8%	13.9%	8.5%
# of Retail Outlets	7,059	6,076	5,667	6,034	6,698	6,600
# of Inspections	745	618	567	604	670	663
# of Compliant Retail Outlets	499	363	469	527	545	563

# of Incomplete Inspections*	90	88	23	13	37	48
# of Noncompliant Retail Outlets	156	167	75	64	88	52
*An inspection may be incomplete because a retailer does not sell tobacco products, is inaccessible to youth, is out of business, is a private club or private residence, or is wholesale or carton sale only.						

D. Federal FDA inspections through MDH

To ensure retailer compliance with the Family Smoking Prevention and Tobacco Control Act, MDH has a contractual agreement with the FDA to conduct undercover buys, inspect retail advertising and labeling, and conduct other directed inspections on behalf of the FDA. MDH is currently in the ninth year of this agreement.⁵

- Inspections are conducted by MDH staff who are commissioned to perform inspections on behalf of the FDA.
- Each of the four regions of the State (central, eastern, southern, and western) is assigned a full-time Commissioned Officer and two youth inspectors (one male, one female, ages 16-17). Youth inspectors only perform undercover buy inspections; they are not permitted to accompany a Commissioned Officer during any other type of inspection.
- Immediately following each inspection, results are submitted electronically to the FDA for final review and enforcement action.
- Violations may lead to warning letters, civil money penalties, no-tobacco-sales orders, or other enforcement actions. Since FDA regulates all tobacco products, including ESDs, hookah, smokeless tobacco and cigars, retailers selling tobacco products must comply with all applicable federal laws and regulations, in addition to State laws.

⁵ Title 21 USC 301 (2009)

Public FDA enforcement data for Maryland detailing retailer violations since FFY 2014 is outlined in the below table.

FDA's Public Data for Maryland*

	FFY 2014	FFY 2015	FFY 2016	FFY 2017	FFY 2018
No Tobacco Sale Orders	0	0	3	4	4
Civil Money Penalties	88	176	71	104	87
Warning Letter Issued	260	236	139	143	276
No Violation Observed	1,081	2,574	2,940	2,006	1,632
Total Inspections Posted on FDA Website	1,429	2,986	3,153	2,257	1,999
<p><i>*Note: These data are from FDA's public website: https://www.accessdata.fda.gov/scripts/oc/inspections/oc_insp_searching.cfm.</i></p> <p><i>These dates do not necessarily represent the date of inspection; rather the date reflects when FDA made a decision on its inspection. Some Compliance Check Inspections involve the use of a minor under the supervision of the inspector(s).</i></p>					

E. Enforcement through the Comptroller

The Comptroller's Field Enforcement Division supports local health department staff and law enforcement with the implementation of youth access laws. Specifically, the Field Enforcement Division:

- Maintains a list of licensed tobacco retailers across the State and shares the list annually with MDH.
- Participates in training events for local health departments. For example, in September 2018, the Field Enforcement Division took part in a webinar on the new regulatory framework for ESDs.
- Acts as a liaison between MDH and the Maryland Court's e-license system to ensure the accuracy of tobacco outlet license information.
- Works with local jurisdictions that present evidence of multiple convictions and/or civil liabilities against licensed tobacco outlets for illegally selling tobacco products to minors.
- Holds hearings with tobacco outlet licensees or owners that are in violation of youth access laws.

By law, the Comptroller has discretion to suspend, revoke, or refuse to renew a license as a result of these violations. Information highlighting the number of referrals from local health departments and related sanctions is provided in a companion report submitted by the

Comptroller, also required by Chapter 773 of the Acts of 2017 (HB 185).

Youth enforcement strategies in support of §10-108 of the Criminal Law Article

MDH and Comptroller enforcement strategies focus on educating tobacco retailers and increasing retailer compliance with youth access laws. Because there is an existing licensing structure in place, it is possible to ensure organized enforcement of retailers, thereby providing a systematic and equitable way to prevent youth possession. MDH concurrently focuses on school- and community-based prevention of tobacco use among youth, as well as educating retailers on how to detect false identification. These outreach efforts are additional mechanisms to reduce youth tobacco use, and thus possession. Specific youth prevention activities coordinated through local health departments are described in the following sections.

In some jurisdictions, minors who possess tobacco products in schools are referred to local health departments for cessation and educational efforts. In SFY 2019, 372 youth were provided these services after being cited for possession of tobacco products in school settings.

Training and Assistance to Tobacco Retailers to Improve Compliance

Statewide efforts to reduce the rate of illegal tobacco sales to minors and to limit the availability of tobacco products to minors include: (1) MDH's direct outreach to retailers as well as the general public, including mass reach media development and placement; (2) collaboration and funding to partner organizations; and (3) trainings and technical assistance through local health departments and partners.

A. Direct outreach to retailers and mass reach media initiatives

In SFY 2015, MDH developed and launched the Responsible Tobacco Retailer Campaign, which includes the following materials:

- Toolkits, quick reference guides, and ancillary materials to enhance tobacco retailer education. These materials, sent to all licensed tobacco retailers, contain information and resources retailers need to remain in compliance with all tobacco sales laws.
- Radio, billboard, and transit advertisements placed throughout the State. Messaging stresses responsible tobacco retailing and describes the three essential steps for compliance with youth access laws: (a) ask for photo identification of customers under 27 years of age who are attempting to purchase tobacco or ESDs; (b) check to make sure all customers are over 18 years of age; and (c) refuse to sell tobacco to everyone under 18 years of age.
- A website that contains electronic versions of the retailer guide and ancillary materials, along with an interactive online training presentation and quiz (www.NoTobaccoSalesToMinors.com).

MDH maintains and enhances these initiatives by updating resources to reflect new tobacco laws, offering free toolkit materials and online training (available by request in nine languages), and regularly updating the www.NoTobaccoSalesToMinors.com website.

In SFY 2019, MDH maintained continuity of mass reach media outreach by placing updated advertisements on transit, Gas Station TV, and radio stations airing specifically in grocery stores. Additionally, materials were sent to over 6,000 licensed tobacco retailers and vape shops in Maryland, as well as all local health departments and partners. The mailings included a window cling, a quick reference guide, and a 2019 calendar to place near the register to assist with determining the age of customers.

B. Collaboration and funding to community and partner organizations

- MDH works collaboratively with the Comptroller on training and technical assistance to local health departments for referring repeat violators to the Comptroller for hearings. MDH also collaborates with tobacco retailer associations to increase voluntary compliance and support from the retail community.
- In SFY 2019, MDH provided funding to six Minority Outreach and Technical Assistance (MOTA) organizations and other partners to conduct in-person educational visits and hold community meetings on youth access to tobacco and ESDs. These organizations are often embedded in high-risk communities, have public health and tobacco control expertise, and are respected leaders in their jurisdictions.

The six organizations funded in SFY 2019 are:

- Baltimore City, *New Vision House of Hope, Inc.*
- Dorchester County, *Eastern Shore Wellness Solutions*
- Frederick County, *Asian American Center of Frederick*
- Harford County, *Inner County Outreach*
- Prince George's County, *Black Mental Health Alliance*
- St. Mary's County, *Minority Outreach Coalition*

Collectively, the MOTA organizations conducted 827 in-person educational visits with tobacco merchants, 64 of which were vape-only shops, to discuss complying with the State youth access laws and properly training their employees to do so. MOTA organizations and community partners also hosted four community forums to reduce youth access to tobacco products and developed a t-shirt campaign to promote tobacco and vape-free messages to youth.

- Beginning in 2001, MDH has provided funding to the Legal Resource Center for Public Health Policy at the University of Maryland, Carey School of Law (Legal Resource Center) to address tobacco control policy issues. Since SFY 2015, MDH has allocated additional resources to the Legal Resource Center to deliver technical assistance to MDH, local health departments, and partners on compliance with tobacco sales laws, as well as to host regional trainings across the State for local health department staff, law enforcement, community-based organizations, and partners. The Legal Resource Center has developed and disseminated materials on best practices for law enforcement, health, and judicial officials on implementation and enforcement of tobacco retailer compliance programs. The Legal Resource Center has also responded to technical assistance requests from State, county, and municipal officials overseeing tobacco retailer compliance programs each fiscal year, and presented at numerous coalition, town hall, and leadership meetings.

Specific activities completed by the Legal Resource Center in SFY 2019 include:

- Responding to more than 50 technical assistance requests regarding compliance checks of retail establishments, procedures for required compliance checks, and the impact of federal, State, and local youth access laws on businesses.
- Presenting at enforcement-focused meetings across the State as well as at several youth-focused tobacco and ESD prevention training events.
- Hosting a full-day enforcement meeting for local health departments on April 23, 2019 at the University of Maryland School of Law in Baltimore, with 45 attendees.
- Hosting two webinars to assist local enforcement staff with compliance checks and educational efforts.
- Hosting a statewide tobacco control conference with 152 attendees at the BWI Marriott in Linthicum, Maryland on May 14, 2019; the conference included dedicated tobacco enforcement sessions on Synar and FDA inspection protocols.
- Distributing an electronic newsletter with timely tobacco enforcement information to more than 260 recipients each quarter.

C. Trainings and technical assistance through local health departments and partners

In SFY 2019, MDH provided funding to local health departments to support training and technical assistance to improve retailer compliance and reduce youth demand for tobacco products.⁶ Funding for local health initiatives supports activities including: tobacco retailer education visits, local marketing and media campaigns, leadership

⁶ Queen Anne's County Health Department declined funding in SFY 2019.

meetings, and retailer trainings; educational programs for youth cited for possession of tobacco products (in conjunction with youth enforcement strategies for §10-108 of the Criminal Law Article, discussed in the previous section); engagement with non-governmental organizations to provide tobacco retailer and community education; town hall meetings to raise awareness of youth access laws; and partnerships with schools as well as faith-based and youth organizations on youth access prevention.

In SFY 2019, local health departments:

- Educated 3,200 retailers through face-to-face sessions at tobacco sales outlets.
- Conducted nine group trainings for tobacco retailers with 120 total attendees.
- Hosted 40 leadership meetings with community partners, law enforcement, local State's Attorney community action agencies, and stakeholders with 453 total attendees.
- Conducted 29 faith-based collaborative events to raise awareness in the faith community about tobacco use, youth access to tobacco products, and prevention with 1,864 total attendees.
- Participated in 77 school-based collaborative events with 15,258 total attendees.
- Conducted 29 youth events to promote awareness about the illegal sales of tobacco to minors with 10,671 total attendees.

Additional SFY 2019 local health department highlights are detailed below:

- Eleven jurisdictions worked with schools to promote State laws prohibiting youth access to reduce attempts to purchase tobacco products through efforts including: conducting classroom presentations, delivering routine morning announcements and back-to-school night presentations, facilitating parent-teen meetings with law enforcement, and developing billboards and other marketing campaigns to promote laws.
- Anne Arundel County Health Department sponsored a series of youth engagement and education events on tobacco sales laws and youth prevention including hosting a Tobacco Free Kids Week with activities planned by their Students Against Destructive Decision chapters, engaging a total of 6,550 high school youth. The week long events concluded with students signing a pledge card that states: "I acknowledge that it is illegal to purchase tobacco products under the age of 18."
- Baltimore County Health Department hosted two retail trainings for 48 employees from Royal Farms and Exxon in collaboration with the Comptroller.
- Calvert County Health Department and Calvert Health Medical Center collaborated on a 'Tobacco Road Show' tour of seven schools where they presented on youth access and tobacco sales laws, in addition to tobacco and ESD prevention; 979 students were educated.
- Carroll County Health Department contracted with the NAACP to provide vendor education to tobacco retailers.

- Talbot County Health Department hosted a leadership meeting with the County's Drug and Alcohol Addictions Council and representatives from the State Senate Office, Circuit and District Courts, law enforcement agencies, the Department of Juvenile Services, and MDH's Behavioral Health Administration to share enforcement efforts and strengthen the partnerships.
- Worcester County Health Department held their annual Alcohol and Tobacco Recognition Breakfast to acknowledge businesses for passing compliance checks in the previous fiscal year. The businesses were also recognized by an advertisement placed in two local newspapers.

Partner highlights for SFY 2019 are detailed below:

- The Black Mental Health Alliance collaborated with the Queenstown Community Center to present, educate, and engage youth in discussions about the dangers of tobacco and nicotine use in a low-income community in Mount Rainier, Maryland. Youth worked in breakout groups to write "love letters" to family members and friends asking them to stop smoking. In total, the Black Mental Health Alliance educated 179 tobacco and 21 vape-only shops on youth access laws, and conducted one community education event that educated 27 youth.
- New Vision House of Hope, Inc. partnered with the Zeta Healthy Aging and Sigma Beta Youth Club to conduct an "Intergenerational Community Forum" at the Zeta Center in Baltimore, Maryland on May 4, 2019. The forum was attended by representatives from the University of Maryland and several other community organizations. At the forum, New Vision presented on the dangers of tobacco and nicotine use among youth and adults, including a discussion of Maryland's youth access laws. Youth from Sigma Beta Youth group also conducted presentations on ESD prevention, including their own efforts to educate peers on not using tobacco and nicotine products. In total, New Vision educated 153 tobacco and 22 vape-only shop merchants on youth access laws and conducted a community forum that educated 86 participants, including 21 underage youth.
- Eastern Shore Wellness Center developed a local tobacco education and enforcement brochure that highlighted the role tobacco retailers have in protecting youth from tobacco use. Eastern Shore Wellness Center also conducted two tobacco and nicotine education events called "Community Talks" on March 29, 2019 and May 9, 2019 at the Empowerment Center and at the Full Gospel Church of God, respectively, in Dorchester County. Eastern Shore Wellness Center engaged the following partners in these events: James Pinkett, President, NAACP (Dorchester branch), historian Hershel Johnson, members of Mace's Lane Alumni Association, and the Dorchester County Health Department. Overall, Eastern Shore Wellness Center conducted 81 store-to-store tobacco and vape shop vendor education visits, and two community education events that educated 61 participants.

Ensuring Future Compliance

The tobacco control landscape continues to change, driven in large part by skyrocketing use of ESDs by youth and young adults. Youth ESD use spiked nationally in 2018, increasing by 78 percent among high school youth in one year alone.⁷ The U.S. Surgeon General has called this extreme rise in youth ESD use an “epidemic.”⁸ In Maryland, more youth use ESDs than cigars, cigarettes, and smokeless tobacco, and youth use ESDs four times more than adults.⁹ Maryland is committed to preventing youth from suffering a lifetime of nicotine addiction through implementation of evidence-based strategies, including strong policy interventions to support enforcement of retail sales laws and retailer education.¹⁰

New legislation to strengthen youth access laws and retailer compliance

Two pieces of legislation were passed during the 2019 Legislative Session by the Maryland General Assembly that address youth access to tobacco products and retailer compliance efforts beginning in SFY 2020 by: (1) increasing in the tobacco sales age from 18 to 21, and (2) establishing an Alcohol and Tobacco Commission to oversee retailer licensing and enforcement. Effective dates for these laws are October 1, 2019 and June 1, 2020, respectively.

Chapter 396 of the Acts of 2019 (HB 1169) Business Regulation – Tobacco Products and Electronic Smoking Devices – Revisions, effective October 1, 2019: This bill increases the minimum tobacco sales age from 18 to 21. Known as Tobacco 21, the new law renames electronic nicotine delivery systems (ENDS) to electronic smoking devices (ESDs) to be inclusive of more types of products. Tobacco 21 also classifies ESDs as “tobacco products,” and makes several important enforcement-related changes, including elimination of youth purchase, use, and possession laws (Criminal Law Article §10-108). Other enforcement changes include a new requirement for tobacco retailers and vape shops to post age-of-sale warning signs with specific language in visible locations as well as use of government-issued ID (not school or employer ID) to verify customer age. Additionally, the law specifies that the licensee, not clerk, is responsible for remunerating civil penalties for illegal tobacco sales (Health General Article §§24-305 and 24-307). There is no grandfathering provision for those 18 to 20 years old; however, active duty military personnel, 18

⁷ Cullen KA, Ambrose BK, Gentzke AS, Apelberg BJ, Jamal A, King BA. Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students — United States, 2011–2018. *MMWR Morb Mortal Wkly Rep* 2018;67:1276–1277, Accessed 15July2019 at <https://www.cdc.gov/mmwr/volumes/67/wr/mm6745a5.htm#suggestedcitation>

⁸ Office of the Surgeon General, Surgeon General’s Advisory on E-cigarette Use Among Youth, Accessed 15July2019 at <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>

⁹ Maryland Department of Health. Monitoring Changing Tobacco Use Behaviors: 2000–2016. Summary Report. Baltimore: Maryland Department of Health, Prevention and Health Promotion Administration, Cancer and Chronic Disease Bureau, Center for Tobacco Prevention and Control, December 2018. Accessed 15July2019 at https://phpa.health.maryland.gov/ohpetup/Documents/2000-2016%20Summary%20Report_Monitoring%20Changing%20Tobacco%20Use%20Behaviors.pdf

¹⁰ Centers for Disease Control and Prevention. Best Practices for Comprehensive Tobacco Control Programs—2014. Atlanta: US Department of Health and Human Services, Center for Disease Control and Prevention, national Center for Chronic Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014. Accessed 5Aug2019 at https://www.cdc.gov/tobacco/stateandcommunity/best_practices/index.htm

years of age and older with valid military ID are exempt.

Chapter 12 of the Acts of 2019 (HB 1052), effective June 1, 2020: Establishes the Alcohol and Tobacco Commission (the Commission), which transfers tobacco retail outlet licensing and enforcement responsibilities from the Comptroller to the Executive Director of the Commission. Responsibilities of the Commission include conducting studies of similar laws in other states, developing best practices for compliance, ensuring appropriate licensing and enforcement, and collaborating with MDH on legislatively mandated data and reporting requirements.

In SFY 2020, MDH will prioritize retailer education and enforcement on these new tobacco sales laws and will work collaboratively with the Comptroller and the newly created Alcohol and Tobacco Commission to ensure a seamless transfer of responsibilities and to support best practices for tobacco compliance and enforcement.

New and ongoing activities for MDH include:

A. Responsible Tobacco Retailer Initiative

MDH initiated a campaign to educate and support tobacco retailers with Tobacco 21 compliance. After Governor Hogan signed Tobacco 21 into law, MDH issued a Tobacco 21 press release on May 14, 2019 and mailed a letter of information in July 2019 to tobacco retailers and vape shops across the State. MDH will send a follow-up postcard as well as new sales age signs and updated training and education materials, including military identification check information, to tobacco retailers, vape shops, and local health departments, prior to October 1, 2019 effective date. MDH also compiled a Tobacco 21 Frequently Asked Question (FAQ) page on its Responsible Tobacco Retailer website (<https://health.maryland.gov/notobaccosalestominors/Pages/Tobacco%2021%20FAQ.aspx>). The FAQ is regularly updated to address new inquiries and ensure accurate information is available to retailers and local health departments across the State.

Additionally, MDH is updating its educational materials and interactive online retailer training and quiz to reflect Tobacco 21. All materials will be made available to local health departments and partners to assist with conducting one-on-one educational visits with retailers and will be posted on the Responsible Tobacco Retailer campaign website, www.NoTobaccoSalesToMinors.com. MDH will also continue media efforts by placing advertisements on targeted mediums such as transit, Gas Station TV, and radio stations.

B. Technical assistance for compliance/enforcement checks

The Legal Resource Center will continue to provide technical assistance to MDH, local health departments, law enforcement, and partners regarding compliance checks of retail establishments and the impact of federal, State, and local youth access laws on businesses,

and procedures for compliance checks. In conjunction with MDH, the Legal Resource Center will host webinars on enforcement topics, including implementation of Tobacco 21, host an in-person meeting focused on enforcement with local health departments and law enforcement officials, and hold a statewide tobacco control conference with dedicated enforcement sessions. MDH will continue to provide technical assistance to local health departments regarding the use of POST for compliance checks.

C. Statewide partnerships to support compliance

Local health department, FDA, and Synar inspections will continue to maintain a sustained enforcement presence in the retailer community, encouraging retailer compliance with tobacco sales laws. MDH will continue to support statewide educational messaging and activities as well as training and technical assistance to retailers and partners. Additionally, MDH will continue to support community partnerships to strengthen tobacco retailer sales compliance with youth access laws.

Conclusion

Due to coordinated enforcement and training efforts by MDH, the Comptroller, and local health departments, Maryland has remained in compliance with federal Synar regulations for four consecutive years, with positive preliminary data for FFY 2020. The reduction in retailer noncompliance rates suggests the efforts outlined in this report have been successful. The line item Governor Hogan created in the Cigarette Restitution Fund budget will assist with sustaining program activities to reduce retailer noncompliance rates.

To reduce youth access to tobacco products in today's rapidly changing tobacco landscape, MDH will use the designated funding to support enhanced retailer education and training on youth sales laws, including training and technical assistance with the new tobacco sales age law, Tobacco 21. Increased education and training will ensure that retailer noncompliance rates remain low, avoiding future costly penalties that would jeopardize Maryland's substance use treatment dollars. Maintaining substance use treatment dollars is especially important now as substance use disorders, opioid addiction, and treatment needs remain high.

MDH's ability to continue successful implementation of the strategies outlined in this report is contingent upon sustained support for these programs. This support is especially important as Maryland works to reverse skyrocketing use of ESDs and to provide retailer support to ensure compliance with the new minimum tobacco sales age. Combined with other evidence-based tobacco control efforts, raising the minimum sales age to 21 is a promising approach to reducing access and preventing youth from ever starting to use tobacco – saving lives and improving the health of Marylanders.

Acronyms

CTPC	Center for Tobacco Prevention and Control
ENDS	Electronic Nicotine Delivery Systems
ESDs	Electronic Smoking Devices
FDA	Food and Drug Administration
FFY	Federal Fiscal Year, October 1 – September 30
HB	House Bill
MDH	Maryland Department of Health
MOTA	Minority Outreach and Technical Assistance
POST	Point of Sale Toolkit
RVR	Retailer Violation Rate
SAMHSA	Substance Abuse and Mental Health Services Administration
SFY	State Fiscal Year, July 1 – June 30