



**Enforcement Strategies for Distribution of Tobacco Products to Minors and
Compliance Training and Assistance to Tobacco Retailers**

2023 Annual Report

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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 of the Criminal Law Article, which aims to limit the availability of tobacco products to minors and ensure retailer compliance with youth access laws.

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Table of Contents

Acronyms	6
Introduction	7
Background	7
Development and Success of Enforcement Strategies to Improve Compliance	8
Retailer enforcement strategies for §10-107 of the Criminal Law Article	8
Youth enforcement strategies in support of §10-108 of the Criminal Law Article	12
Training and Assistance to Tobacco Retailers to Improve Compliance	13
Ensuring Future Compliance	14
Conclusion	15

Acronyms

ATCC	Alcohol, Tobacco, and Cannabis Commission
CDC	Centers for Disease Control and Prevention
CRF	Cigarette Restitution Fund
CTPC	Center for Tobacco Prevention and Control
ESDs	Electronic Smoking Devices
FDA	Food and Drug Administration
FFY	Federal Fiscal Year, October 1 – September 30
LHD	Local Health Department
LRC	Legal Resource Center for Public Health Policy
MDH	Maryland Department of Health
NGO	Non-Governmental Organization
POST	Point of Sale Toolkit
RVR	Retailer Violation Rate
SABG	Substance Abuse Prevention and Treatment Block Grant
SAMHSA	Substance Abuse and Mental Health Services Administration
SFY	State Fiscal Year, July 1 – June 30

Introduction

This report, required annually under Health-General Article §24-307(f), Annotated Code of Maryland, provides an update on the status of ongoing strategies for enforcement of the Criminal Law Article §10-107, which aims to limit the availability of tobacco products to persons under the age of 21 years and ensure retailer compliance with youth access laws. These activities are conducted by the Maryland Department of Health (MDH), in collaboration and consultation with the Office of the Comptroller (the Comptroller); the Alcohol, Tobacco, and Cannabis Commission (ATCC); local health departments (LHDs); and local law enforcement agencies. Information contained in this report was compiled from the noted entities and highlights programmatic activities conducted in state fiscal year (SFY) 2023.

Specifically, Health-General Article §24-307(f), requires an annual report on the following:¹

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

Please note, most local and statewide compliance and enforcement checks of tobacco retailers have resumed after delays experienced from the COVID-19 pandemic. Results from inspections conducted in SFY 2023 and SFY 2024 will be reported in the SFY 2024 report.

Background

Enforcement, education, and training related to federal, state, and local laws that restrict underage access to tobacco products are conducted through both the ATCC and the Center for Tobacco Prevention and Control (CTPC) within MDH. CTPC provides retailer outreach, education, training, and funds local inspections through LHDs. Additionally, CTPC facilitates statewide federal Substance Abuse and Mental Health Services Administration (SAMHSA) Synar Program State inspections and Food and Drug Administration (FDA) inspections. The ATCC conducts hearings and issues warnings, license suspensions, and revocations to repeat violators.

As a condition of the SAMHSA Substance Abuse Prevention and Treatment Block Grant (SABG), 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 persons under the age of 21 years. MDH conducts random unannounced inspections of Maryland tobacco retail outlets and vending machines annually to ensure adherence to Maryland's prohibition on the sale of tobacco products to underage persons. The findings from such

¹ With the passage of HB 1169 - Business Regulation – Tobacco Products and Electronic Smoking Devices – Revisions (2019), §10-108 of the Criminal Law Article was repealed and therefore is no longer applicable to this report. Despite this, MDH will continue to report on strategies and activities to prevent youth from accessing tobacco products.

inspections are reported to SAMHSA each federal fiscal year (FFY). Typically, states must maintain a retailer violation rate (RVR) of 20 percent or less to avoid penalties. Such penalties would include losing up to 10 percent of SABG funds.²

Maryland retailers temporarily exceeded the RVR threshold in FFY 2014 and FFY 2015, but have been compliant every year since FFY 2016. However, Maryland was unable to perform Synar retail inspections during the COVID-19 pandemic (FFY 2021 and FFY 2022), and did not resume until June 2023. Thus, the most recent RVR is 13.1 percent for FFY 2020.³

Despite the success of statewide efforts to reduce youth access to tobacco products, the costs required to sustain these efforts remain high. Beginning in SFY 2017, a Tobacco Enforcement line item was created in the Cigarette Restitution Fund (CRF) budget for approximately \$2 million annually. These dedicated funds are necessary for MDH to maintain enforcement efforts, keep the RVR below the 20 percent threshold, and avoid costly penalties that could jeopardize state substance use treatment dollars.

Development and Success of Enforcement Strategies to Improve Compliance

MDH follows evidence-based recommendations for reducing underage access to tobacco products outlined in the Centers for Disease Control and Prevention (CDC) Best Practices for Comprehensive Tobacco Control Programs – 2014.⁴ These recommendations include: (1) mobilizing the community to restrict underage persons' access to tobacco products, in combination with additional interventions such as stronger local laws directed at retailers, active enforcement of retailer sales laws, and continuous retailer education; and (2) conducting mass-reach 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 outlined below.

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

MDH works collaboratively with LHDs, law enforcement, and the ATCC to enforce existing laws, educate retailers, and sanction repeat violators of the law through the following new and existing strategies:

A. *Recording and tracking sales violations through the online Point of Sale Toolkit (POST):*

MDH uploads a list of approximately 6,000 tobacco retailer licenses into a data collection and mapping software tool – the Counter Tools POST, <https://md.countertools.org/>. POST is a password-protected software system used to compile all tobacco retail outlet inspection,

² US Department of Health and Human Services. Programmatic Requirements for the Synar Program. Substance Abuse and Mental Health Services Administration (SAMHSA), 2022. Accessed 31 July 2023 at <<https://www.samhsa.gov/synar/requirements>>.

³ Maryland Department of Health, "FFY2020 SSES Survey Results," September 6, 2019, Center for Tobacco Prevention and Control, Accessed 31 July 2023 at <https://phpa.health.maryland.gov/ohpetup/Documents/FFY2020%20Synar%20SSES%20Results.pdf>

⁴ Centers for Disease Control and Prevention. Best Practices for Comprehensive Tobacco Control Programs—2014. Atlanta: US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014. Accessed 31 July 2023 at https://www.cdc.gov/tobacco/stateandcommunity/best_practices/index.htm.

education, and assessment data into a unified database that can be tracked, edited, and searched. POST software also provides tools to investigate, visualize, compare, and monitor tobacco retailer compliance with existing state and federal restrictions on the sale of tobacco products to persons under 21 years old. As of June 30, 2023, there were 198 registered POST users across all 24 Maryland jurisdictions. POST users represent staff from the LHDs, local enforcement agencies, and MDH. In SFY 2023, 3,840 visits were added to the POST system, including 2,524 local enforcement visits through LHDs and local enforcement agencies and 1,316 FDA inspections.

B. Local inspections through LHDs/Local Law Enforcement:

LHDs work with community partners, underage purchasers, and designated law enforcement agencies to conduct compliance checks and cite retailers that violate these laws. LHDs schedule compliance checks and retailer education visits throughout the fiscal year based on local needs and availability of staff and law enforcement agency partners.

In SFY 2023, LHDs conducted 4,012 compliance checks:

- 3,738 for routine surveillance of tobacco retailers; and
- 274 follow-up compliance checks after local citations were issued for tobacco sales to underage persons.

Local law enforcement agencies issued 614 citations for illegal sales of tobacco products to persons under the age of 21 years, a reduction of almost 33% from 903 in SFY 2022. LHDs referred 16 tobacco retailers to the ATCC for multiple or repeat violations.

Additional LHD highlights from SFY 2023 include:

Allegany

The Allegany County Health Department funded Fort Recovery, a non-governmental organization (NGO), to conduct tobacco sales retailer education with 64 tobacco retailers. They also help with messaging in the Behavioral Health community.

Baltimore City

The Baltimore City Health Department conducted 930 compliance checks along with the Black Mental Health Alliance, an NGO partner, who supports the underage purchasers for compliance checks and helps with community events. Over 300 retailers were cited for illegal sales, and more than 1,200 visits were made to retail outlets for education and community conversation.

Frederick

The Frederick County Health Department contracted with two NGOs, Asian American Center of Frederick and Living Well Youth Works, Inc., to spearhead their retailer education program. Each NGO visited 45 tobacco retailers for tobacco sales education and to answer questions. Both of these organizations are well recognized as community leaders in Frederick County.

Harford

The Harford County Health Department partnered with the Omicron Psi Sigma Chapter of the Phi Beta Sigma Fraternity to educate 250 tobacco retailers on the Tobacco 21 law and provide written information and resources. The Omicron Psi Sigma Chapter has been very supportive of the County’s tobacco control efforts.

Howard

The Howard County Health Department worked with The Surveillance Group, Inc., a professional group of retired police officers that have experience in drug, alcohol, and tobacco sales enforcement, to conduct tobacco enforcement compliance checks. In SFY 2023, 401 compliance checks were conducted in Howard County. The Howard County Health Department trained underage tobacco purchasers to conduct tobacco retailer compliance checks and enforce local laws prohibiting the distribution of tobacco products to persons under the age of 21 years.

Washington

The Washington County Health Department contracted with two NGOs – Brothers Who Care and the Women’s Business League – to perform 78 face-to-face educational visits with tobacco retailers in Washington County. During each visit, new signage and educational information regarding Maryland tobacco sales laws were shared with retailers. Brothers Who Care is a longstanding partner of the County tobacco control program and works with low income and African American communities of Hagerstown.

C. State inspections through the Maryland Synar Program:

To ensure adherence with the federal Synar Amendment, MDH conducts annual unannounced inspections of licensed tobacco retailers and vending machines throughout Maryland. Adult inspectors conduct inspections along with underage purchasers (16 to 20 years old) and revisit noncompliant tobacco retailers to provide one-on-one training and education.⁵ Since FFY 2016, Maryland retailers have remained under the 20 percent RVR threshold, eliminating the requirement of penalty expenditures.

Maryland Synar Retailer Violation Rate by Federal Fiscal Year*

	FFY 2014	FFY 2015	FFY 2016	FFY 2017	FFY 2018	FFY 2019	FFY 2020
RVR	24.1%	31.4%	13.8%	10.8%	13.9%	8.5%	13.1%
# of Retailers	7,059	6,076	5,667	6,034	6,698	6,600	6,478
# of Inspections	745	618	567	604	670	663	648
# Compliant	499	363	469	527	545	563	519

⁵ During the Synar inspection process, underage inspectors have immunity from youth tobacco purchase and possession laws.

	FFY 2014	FFY 2015	FFY 2016	FFY 2017	FFY 2018	FFY 2019	FFY 2020
# Incomplete*	90	84	23	13	37	48	51
# Noncompliant	156	164	75	64	88	52	78
*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.							

Maryland Synar Program modifications and COVID-19-related program impact

Synar checks resumed in late FFY 2023 for the first time in three years following the COVID-19 pandemic in 2020. However, due to staffing shortages and hiring delays, inspections did not start until late June of 2023, preventing MDH from calculating an RVR for FFY 2021, FFY 2022, and FFY 2023. MDH has hired new Synar inspectors and underage purchasers who are now actively out in the field conducting inspections for FFY 2024, after which a new RVR will be calculated.

D. FDA inspections through MDH:

To ensure retailer compliance with the federal Family Smoking Prevention and Tobacco Control Act, MDH has a contractual agreement with the FDA to conduct undercover purchases, inspect retail advertising and labeling, and undertake other directed inspections on behalf of the FDA.⁶ MDH is currently in the 12th year of this agreement.

MDH staff commissioned as FDA agents perform inspections across Maryland. Violations are reported to the FDA and may lead to warning letters, civil money penalties, no-tobacco-sales orders, or other enforcement actions. Since the FDA regulates all tobacco products, including e-cigarettes, hookah, smokeless tobacco, and cigars, retailers selling tobacco products must comply with all applicable federal laws and regulations, in addition to state laws.

FDA enforcement inspections continued in SFY 2023. Enforcement data publicly available through FFY 2023 are outlined in the chart below.

Public FDA Enforcement Data, Maryland

	FFY 2017	FFY 2018	FFY 2019	FFY 2020	FFY 2021	FFY 2022	FFY 2023
No Tobacco Sale Orders	5	4	0	0	0	0	0
Civil Money Penalties	103	87	143	103	0	0	5
Warning Letter Issued	143	276	350	239	0	192	281

⁶ [Title 21 USC 301 \(2009\)](#)

	FFY 2017	FFY 2018	FFY 2019	FFY 2020	FFY 2021	FFY 2022	FFY 2023
No Violation Observed	2,006	1,633	1,923	1,914	5	797	1,898
Total Inspections Posted on FDA Website	2,257	2,000	2,416	2,256	5	989	2,184
<i>Notes: These data are from the FDA's public website: https://timp-ccid.fda.gov/. These dates do not necessarily represent the date of inspection; rather the date reflects when the FDA made a decision related to the inspection. Data for FFY 2023 inspection include results through July 31, 2023.</i>							

E. Enforcement through the ATCC

The ATCC supports LHD staff and law enforcement with the implementation of youth access laws. These responsibilities include:

- Educating the public on alcohol and tobacco use;
- Conducting relevant studies;
- Developing best practices and guidelines for enforcement activities, including inspections and compliance checks;
- Regulating and enforcing licensing requirements for alcohol and tobacco retailers; and
- Reporting aggregate data between local law enforcement and local licensing boards.

The Comptroller collects and processes tobacco-related taxes and returns.

The CTPC Director sits on the ATCC as the MDH representative appointed by the Secretary. At monthly meetings, the CTPC Director may advise the ATCC on best practices related to tobacco control and enforcement, provide an overview of MDH tobacco control efforts, or present relevant statewide data on tobacco behaviors.

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

With the passage of Chapter 396 of the Acts of 2019 (HB 1169) Business Regulation – Tobacco Products and Electronic Smoking Devices – Revisions, §10-108 of the Criminal Law Article, Annotated Code of Maryland was repealed, and as such is no longer applicable to this report. However, youth prevention activities provided through LHDs are discussed in the next section.

Training and Assistance to Tobacco Retailers to Improve Compliance

Statewide efforts to reduce the rate of illegal tobacco sales and to limit the availability of tobacco products to underage people include: (1) direct outreach to retailers and the general public, including mass reach health communications development and placement; (2) collaboration and funding to partner organizations; and (3) trainings and technical assistance through LHDs and partners.

1. *Direct outreach to retailers and mass reach media initiatives:*

Maryland Responsible Tobacco Retailer Program transit advertisements were placed in Baltimore City and County from September-October 2022. These jurisdictions have some of the highest numbers of tobacco retailers. In September 2023, the “21 or None” toolkits were updated and mailed to over 6,000 licensed tobacco retailers in Maryland. These comprehensive toolkits include a poster, window cling, overview letter, infographic, and a quick reference guide that assists retailers in identifying valid IDs and the minimum legal sales age. All materials include information about the free Maryland Tobacco Quitline (1-800-QUIT-NOW) and are available for free download from the “No Tobacco Sales to Minors” website (www.NoTobaccoSalesToMinors.com). This site also features a free online training module and quiz for store owners and employees, as well as cessation resources.

In SFY 2023, mass reach health communications initiatives included printed “21 or None” responsible retailer advertisements featured in the August, October, and December 2022 Maryland Beverage Journal publications. Each monthly publication is estimated to obtain 5,478 impressions, with a conservative estimated total of 16,000+ impressions for the entire printed media initiative. Since media outlets such as magazines can remain in circulation long after the month it is first circulated, this impression count could be even greater. In the month of June, a LinkedIn Responsible Retailer ad campaign was launched and garnered 66,101 impressions along with a National Retail Solutions digital static screen campaign that is anticipated to secure over 500,000 impressions.

2. *Collaboration and funding to partner organizations:*

MDH works collaboratively with both the Comptroller and the ATCC to provide training and technical assistance to LHDs on various tobacco enforcement topics, including retailer education and compliance with Maryland tobacco laws. MDH receives an annual list of licensed tobacco retailers from the Comptroller to assist with local tobacco enforcement efforts. In addition, MDH routinely refers LHDs and members of the public to the ATCC for assistance with addressing specific enforcement issues within their local jurisdictions.

MDH continues to fund the Legal Resource Center for Public Health Policy (LRC) at the University of Maryland, Francis King Carey School of Law to develop and disseminate materials on best practices for law enforcement, health, and judicial officials on implementation and enforcement of tobacco retailer compliance programs. In SFY 2023, the LRC responded to technical assistance requests from LHDs, MDH, NGOs, members of the public, law enforcement, and others on tobacco enforcement issues by providing education, materials, and other resources. The LRC also presented at coalition, town hall, and leadership meetings across Maryland on similar enforcement topics.

3. *Trainings and technical assistance through LHDs and partners:*

In SFY 2023, MDH provided funding to all 24 LHDs to support training and technical assistance to improve retailer compliance and reduce youth demand for tobacco products. Funding for local health initiatives supports various activities, including tobacco

retailer education and training, local marketing and media campaigns, leadership meetings, youth educational programs, and community engagement.

In SFY 2023, LHDs:

- Educated 1,786 tobacco retailers (face-to-face) on state tobacco sales laws through 23 NGO partners.
- Educated 3,358 tobacco retailers (face-to-face) on state tobacco sales laws through LHD staff.
- Implemented 63 school-based collaborations, with 10,196 participants that raised awareness about underage access to tobacco products and prevention.
- Supported 19 faith-based partnerships to raise awareness in the faith community about tobacco use, underage access to tobacco products, and prevention efforts through collaborative events, reaching 1,640 participants.
- Conducted 21 youth events with 1,340 participants across the state to promote awareness about illegal sales of tobacco products to underaged persons.

Ensuring Future Compliance

Moving forward, MDH will build on these successful enforcement activities by continuing to:

- Conduct local, state, and federal compliance and enforcement checks with tobacco retailers;
- Collaborate with the ATCC, Comptroller, LHDs, LRC, and other partners to educate and train tobacco retailers; and
- Update and disseminate educational materials such as the “21 or None” retailer toolkit and the “No Tobacco Sales to Minors” website.

Furthermore, MDH will pursue collaborations with tobacco retailer associations to increase voluntary compliance and support from the retail community.

In addition, MDH will continue conducting surveillance and sharing data on relevant tobacco use behaviors and tobacco-related health disparities in Maryland. Results from the 2021 Behavioral Risk Factor Surveillance System (BRFSS) show a decrease in the prevalence of adult cigarette smoking from 19.1 percent in 2011 to 10.1 percent. Data from the 2021-22 Maryland Youth Risk Behavior Survey/Youth Tobacco Survey showed that approximately 65,038 (27.4 percent) high school students in Maryland used tobacco products, including cigarettes (3.6 percent), cigars (3.2 percent), smokeless tobacco (3.0 percent), and electronic smoking devices (ESDs) (14.7 percent).⁷

Despite the reduced prevalence of all tobacco product use, youth preference for ESD products remains high and the risk of conventional tobacco products such as cigarettes, cigars, and smokeless tobacco is still present. Disposable ESD manufacturers claiming to produce

⁷ 2021-2022 Maryland Youth Risk Behavior Survey/Youth Tobacco Survey

“tobacco-free nicotine” products (e.g., Puff Bar), also known as non-tobacco nicotine (NTN), are on the rise. These products contain nicotine derived from a laboratory rather than traditional tobacco plants. The FDA now regulates NTN products and requires NTN products receive the same FDA pre-market authorization as tobacco products before they can be legally sold in retail outlets. The definition of a tobacco product under current Maryland law covers products derived from NTN. Flavored tobacco products, including ESDs, also remain popular with youth and young adults. According to the 2022 National Youth Tobacco Survey, among middle and high school students that use ESD products, 85 percent prefer flavored products and most use disposable products.⁸ MDH, together with local, state, and federal partners, will continue monitoring these emerging products and implementing initiatives that reduce youth access through rigorous retailer education, training efforts, and ongoing enforcement.

Conclusion

Through coordinated enforcement and training efforts from MDH, the Comptroller, the ATCC, LHDs, and other partners, Maryland has remained compliant with federal Synar regulations since FFY 2016. Despite the impact of the COVID-19 pandemic, MDH has sustained local tobacco enforcement checks, tobacco cessation services, tobacco prevention messaging through mass reach health communications, and surveillance activities of tobacco use behaviors. MDH and partners will continue to support best practices for reaching retailers and the community, educating about youth access laws, highlighting the dangers of tobacco use, and providing cessation support services, such as the Maryland Tobacco Quitline (1-800-QUIT-NOW).

The continued funding of statewide tobacco control and enforcement activities will help sustain program activities that reduce retailer noncompliance rates. As the tobacco product landscape and youth tobacco use behaviors continue to change, MDH will utilize the designated funding to support enhanced retailer education and training on youth sales laws, including training and technical assistance with Maryland tobacco laws. This increased education and training will help ensure that retailer noncompliance rates remain low, preventing future costly penalties that would jeopardize substance use treatment dollars in Maryland. In addition, funding will continue to enhance and expand programming for vulnerable groups in Maryland that bear a disproportionate burden of tobacco-related health disparities, including: people living with behavioral health conditions; racial and ethnic minorities; individuals with low income; and lesbian, gay, bisexual, transgender, and queer communities.

The 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 reduce use of ESDs, provide retailer support to ensure compliance with youth access laws, and improve the health of Marylanders.

⁸ Cooper M, et al. Notes from the Field: E-cigarette Use Among Middle and High School Students — United States, 2022. *MMWR Morb Mortal Wkly Rep* 2022;71:1283–1285. Accessed 22 Aug 2023 at <https://www.cdc.gov/mmwr/volumes/71/wr/mm7140a3.htm?s_cid=mm7140a3_w>.