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Tobacco Compliance Bulletin
TCB – 25-001

*** REFERRAL CRITERIA FOR ADMINISTRATIVE ACTION AGAINST TOBACCO LICENSEES FOR TOBACCO SALES TO INDIVIDUALS UNDER 21 AND VIOLATIONS OF THE TOBACCO RETAIL MODERNIZATION ACT OF 2024***

***Subject**: Local health and police departments should follow certain referral requirements related to Tobacco Sales to Individuals Under 21 and violations of the Tobacco Retail Modernization Act of 2024 for the ATCC to successfully pursue administrative charges*

Recently, local health and police departments within the State of Maryland sought clarification from the Alcohol, Tobacco, and Cannabis Commission ("ATCC") of the reporting requirements for the agency to pursue administrative action against tobacco retailers that sold tobacco products to an individual under the age of 21 in violation of Maryland Criminal Law Article §10-107, the related civil citations in Health General Article §24-305 and §24-307, or similar municipal laws. In addition, stakeholders have also inquired as to how violations of the Tobacco Retail Modernization Act of 2024 ("TRMA") will be reviewed and considered by the agency.[1] This bulletin outlines the agency's procedure for referrals and administrative hearings for such referrals.

Generally, the Executive Director of the ATCC has the authority to reprimand a licensee, or to suspend or revoke the license of a tobacco product retailer pursuant to Business Regulation Article Titles 16, 16.5, and 16.7 because of a violation of the TRMA and selling cigarettes, other tobacco products, and/or electronic smoking devices to an individual under the age of 21.[2] Citations for such violations may be based on Criminal Law Article §10-107 ("Distribution of tobacco product to individuals under 21"), Health General Article §24-305 ("Sale, distribution, or offer for sale of electronic smoking device to individuals under 21 prohibited"), or §24-307

[1] See SB1056/Chapter 462 of the Acts of 2024.
[2] Under the TRMA, the District Court has the authority to also order the Executive Director to suspend or revoke a Tobacco Products Retailer's license after certain criminal convictions.

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("Distribution of tobacco product to minor"). Retailers may also be issued citations for tobacco sales to individuals under 21 based on municipal law (for example, Baltimore City Health Code §12-502) or federal law (Family Smoking Prevention and Tobacco Control Act, as amended by Public Law 116-94 (2019). The adjudication of citations arising from these laws or ordinances by local jurisdictions provides the basis for the ATCC to pursue administrative action against retail licensees.

Local health and police departments ("reporting agencies") are primarily responsible for conducting enforcement of State and local laws prohibiting tobacco sales to individuals under 21 within their respective jurisdictions. Stakeholders must work together to provide the information and the necessary witnesses to ensure successful administrative proceedings. With the passage of the TRMA, the legislature enumerated and enhanced penalties against tobacco products retailers for failure to comply with product placement guidelines, conduct face-to-face transactions, and require government IDs to verify the age of individuals under 30 years old before allowing them to purchase tobacco products.[3] To ensure that incidents occurring from violations of both underage sales of tobacco products laws and the TRMA are administratively charged properly, the ATCC favors a two-step approach to reporting such incidents.

First, the ATCC advises reporting entities to send a referral to pursue administrative license violations against a tobacco retailer only following at least two (2) incidents that could include a Sales to Individuals Under 21 and/or a TRMA related violation that occurred at the same licensed location within 12 months. The first triggering violation should include a conviction or admission of guilt on the civil or criminal citation issued. The second violation could be an underage sales violation, a verified Synar enforcement action, or an adjudicated citation for other violations under the TRMA.

In other words, agencies should only refer a tobacco retail license holder for hearing with the ATCC when there has been a conviction or adjudicatory finding of an underage sales violation, followed by charges for a new underage sales violation, a Synar violation, or adjudicated violation of the TRMA.

To begin the administrative charging process, the ATCC requires the following information from reporting entities:

- Referral Letter identifying the tobacco retailer and summarizing the violation history
    - Please identify a referring agency point of contact to receive notices on the referral and with whom the ATCC can coordinate via email and telephone.
- Case File related to the violations to include the following:
    - A written report summarizing the incident(s).
    - Any Photographic evidence of the tobacco product and/or sales receipt (do not include images or identifying information of any underage person)
    - Copy of the citation(s) issued to the staff of the licensed location.

[3] Please see the ATCC's 2024 Legislative Manual to review a copy of SB1056 "Tobacco Retail Modernization Act of 2024" which is viewable and can be found at: atcc.maryland.gov.

    - Proof of any payment of the citation and admission of guilt (if available).
- Records of District Court or Administrative Disposition of the Citation (e.g. Maryland Judiciary Case Search report)

These items should be submitted electronically to Field Enforcement Director Jeffrey Herndon at jeffreyh.herndon@maryland.gov. While the ATCC prefers that these documents be sent via email, if they cannot, then please send physical copies of these documents to the following address:

Alcohol, Tobacco, and Cannabis Commission
Office of the Executive Director
c/o Jeffrey Herndon, Director
Field Enforcement Division
1215 East Fort Avenue, Suite 300
Baltimore, Maryland 21230

Upon submission, these documents shall be reviewed to determine if there is a sufficient basis for administrative action, to include any penalty imposed by the District Court for violations of the TRMA. The ATCC shall notify the point of contact identified by the reporting agency if there is any additional information needed. Referring agencies should contact the ATCC for further guidance on ATCC administrative action for circumstances that are outside the scope of this bulletin.

Second, once a determination has been made by the ATCC to pursue administrative action against the tobacco retailer the ATCC shall prepare for an administrative hearing on the reported violations. The ATCC and reporting agency shall work together to coordinate a hearing date and time that allows for witnesses from the reporting agency, as well as the tobacco products retailer, to participate. The hearing officer shall then schedule a hearing on an available date and time for the necessary staff and issue a formal hearing notice to the retail license holder listing the basis for the administrative action.

Please note that the hearings will be held in-person at our offices located at 1215 East Fort Avenue, Suite 300, Baltimore, Maryland 21230. To aid in understanding what to expect, attached to this bulletin is the ATCC's Administrative Hearing Procedure (Attachment 1), the supplemental Hearing Procedure for Underage Tobacco Sales Violations (Attachment 2), and a template Referral Letter (Attachment 3).

If you have any questions or concerns regarding this bulletin, please do not hesitate to contact our offices at 443-330-6990 or email Thomas R. Akras, Director of the Legal and Legislative Division at thomas.akras1@maryland.gov.

Jeffrey A. Kelly
Executive Director
Alcohol, Tobacco, and Cannabis Commission