

Department of Legislative Services
 Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

Senate Bill 382
 Finance

(Senator Conway)

Economic Matters

Business Regulation - Automated Purchasing Machines - Licensing of Buyers and Required Records

This bill establishes specified licensing, transaction, recordkeeping, and reporting requirements for “automated purchasing machines” (APMs) (also known as reverse vending machines), “buyers,” and their “resident agents.” A county or municipality in which an APM is located must designate by resolution the primary law enforcement unit to receive APM transaction records. Each knowing and willful violation of the bill’s provisions is a misdemeanor and subject to a fine of up to \$1,000 for a first offense and up to \$5,000 for a second or subsequent offense. The Secretary of Labor, Licensing, and Regulation must adopt regulations to implement and enforce the bill.

Fiscal Summary

State Effect: General fund expenditures for the Department of Labor, Licensing, and Regulation (DLLR) increase by \$36,900 beginning in FY 2015 to implement a licensing system and to provide necessary staff. General fund expenditures increase minimally for the Department of State Police (DSP) beginning in FY 2015 due to an increase in registrations with the Regional Automated Property Information Database (RAPID) system. General fund revenues increase minimally beginning in FY 2015 from license and renewal fees for buyers. DSP can otherwise enforce the bill with existing budgeted resources. Penalty provisions do not materially affect State revenues.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
GF Revenue	-	-	-	-	-
GF Expenditure	\$36,900	\$31,000	\$32,500	\$34,000	\$35,600
Net Effect	(\$36,900)	(\$31,000)	(\$32,500)	(\$34,000)	(\$35,600)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local governments can implement the bill with existing budgeted resources. Revenues are not materially affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Automated purchasing machine” means a self-service device that is designed to dispense money in exchange for personal property – also known as a reverse vending machine. “Buyer” means a person that buys or offers to buy personal property by means of an APM. “Resident agent” means a person registered in the State who (1) serves as a primary point of contact; (2) regularly conducts business for the buyer; and (3) maintains a physical location in the State where the resident agent regularly conducts business and at which the resident agent or an employee of the resident agent is physically present during normal business hours.

The bill does not apply to an APM that is used exclusively for collecting “recyclable materials” – material that, if not recycled, would become solid waste for disposal in a refuse disposal system and may be collected, separated, or processed and returned to the marketplace in the form of raw materials or products. This includes paper, glass, metals, plastics, and cardboard.

Licensing Requirements

Except in limited circumstances, a person must have a license before the person does business in the State as a buyer. A license authorizes the licensee to do business as a buyer only at the address for which the license is issued. The initial application fee is \$300 and is nonrefundable.

An applicant for a license must submit an application signed under oath and containing specified identifying information related to the applicant and the applicant’s resident agent. The application form must also contain a statement indicating that the applicant authorizes a municipal, county, or State police officer or agent acting in the course of a stolen property investigation or an investigation of a violation of the bill to inspect and photograph all personal property and records at the applicant’s business or storage locations.

An applicant for licensure as a buyer must apply as specified for a national and State criminal history records check (CHRC) with the Criminal Justice Information System (CJIS). In addition, before an individual may begin work for a buyer as a resident agent,

the buyer must submit the name of the individual to the Secretary and the individual must apply for the same national and State CHRCs.

CJIS must provide specified information to the Secretary for each individual who applies for CHRCs. The applicant must pay the associated fees; however, the buyer may pay the fees on behalf of the applicant or other individual requiring a CHRC under the bill. Information obtained by the Secretary from CJIS is confidential and may be disseminated only to the individual who is the subject of CHRC.

On receipt of a complete national and State criminal record report from CJIS, the Secretary must issue a license to each applicant who meets the requirements of the bill.

The Secretary may not issue a license for an address that is a hotel or motel room, a motor vehicle, or a post office box. A buyer may change the place of business for which a license is issued under specified circumstances. The Secretary may not issue more than one license for a single business location. The Secretary may not issue a license to a minor.

Licenses expire on the first April 30 that comes after the effective date of the license in an even-numbered year unless renewed for a two-year term. The Secretary must renew the license of each licensee who meets the specified renewal requirements of the bill. The renewal fee is \$265. Specified supporting documentation is required for license renewal. The Secretary may stagger the terms of the licenses.

The Secretary must consider specified information in the granting, denial, renewal, suspension, or revocation of a license or the reprimand of a licensee when an applicant or licensee is convicted of a felony or misdemeanor.

The Secretary must verify periodically the continued employment or licensure of individuals requiring CHRCs in accordance with regulations adopted by the Secretary of Public Safety and Correctional Services.

Transaction and Reporting Requirements

A buyer must ensure that each APM that the buyer owns or operates in the State meets the following requirements:

- Before completion of a transaction in which an APM purchases personal property, the APM must require the seller to provide his or her full name, home address, contact phone number, and date of birth.

- To verify the above information, the APM must require the seller to submit a government-issued identification card or any other form of personal identifying information required by the Secretary of Labor, Licensing, and Regulation.
- On completion of a transaction, the APM must make a record of the transaction that includes the required information obtained from the seller; a photograph of the seller; an electronic copy or a photocopy of the identifying information; a description of the personal property; and the date, time, and location of the transaction.
- If the item purchased is an electronic device, the APM must make a record of the make and model of the device and the serial number of the device (if it can be determined at the time of purchase), subject to specified conditions.

A buyer may not buy or offer to buy personal property from a minor. A buyer may not buy an electronic device valued at \$25 or more if the APM cannot determine the serial number of the electronic device.

A buyer must use an individual to screen each transaction in which an APM purchases personal property and must keep a record of the screener assigned to screen each transaction. An individual who screens a transaction may screen the transaction remotely.

A buyer must submit a copy of the required records to the primary law enforcement unit within 48 hours after a transaction in a paper or electronic format acceptable to the primary law enforcement unit. However, if a serial number cannot be determined at the time of the transaction, a buyer must submit a preliminary report to the primary law enforcement unit within 48 hours after the transaction with all required information except for the serial number. The buyer must then submit a final report with all required information, including the serial number, within 17 days of the transaction. The reporting requirements may not be construed to require a buyer to incur a substantial financial burden to comply. A “primary law enforcement unit” means the Department of State Police, a police department, or sheriff, as designated by a resolution of the county or municipality in the county in which an APM is located.

A buyer is required to keep all personal property purchased for at least 30 days after the buyer submits the required information to the primary law enforcement unit. A buyer must remove personal property from an APM in intervals of no less than 10 days and notify the primary law enforcement unit of the date and time when the buyer will remove property from an APM at least 72 hours before property removal. The primary law enforcement unit may inspect the personal property being removed from an APM at the time of the removal.

A buyer must make all personal property purchased by an APM available for inspection by the primary law enforcement unit at any time. On the request of the primary law enforcement unit, a buyer must provide to the unit any personal property purchased by an APM at the cost of the buyer. Likewise, if a buyer determines that personal property sold to an APM is stolen, the buyer must (1) contact the primary law enforcement unit as soon as practicable and (2) return the personal property to the primary law enforcement unit free of charge.

A buyer must keep the required records for at least one year after the date of the transaction. A copy of a record submitted to the primary law enforcement unit must be kept confidential, is not a public record, and is not subject to public records information requests.

Prohibited Acts and Penalties

Generally, a knowing and willful violation of the bill is a misdemeanor and is subject to a fine of up to \$1,000 for a first offense and up to \$5,000 for a second or subsequent offense. Each violation is a separate offense. Any penalty collected under the bill accrues to the general fund.

Subject to specified hearing requirements, the Secretary may deny a license to any applicant, reprimand a licensee, or suspend or revoke a license for specified acts of fraud and other violations. The Secretary must inform each primary law enforcement unit of each license that is issued, renewed, changed to a new business location, denied, suspended, or revoked and also must distribute periodically to all buyers a list of individuals whose license has been revoked in the State. Whenever a license is suspended or revoked, the Secretary may not issue a license to a buyer for the same business location.

For specified acts generally related to fraud committed by an applicant; licensee; or an agent, employee, manager, or partner of an applicant or licensee, instead of or in addition to reprimanding a licensee or suspending or revoking a license, the Secretary may impose a penalty of up to \$5,000 for each violation, payable to the general fund.

If a licensee is charged with a violation of the bill that could result in suspension or revocation of the license, the Secretary may seek from a circuit court an immediate restraining order to prohibit the licensee from buying, selling, or disposing of personal property or disposing of a record about personal property. The restraining order is in effect until the court lifts the order or the charges are adjudicated or dismissed.

A party to a proceeding under the bill who is aggrieved by a final decision of the Secretary in a contested case may appeal as specified in current law.

State Preemption

The bill preempts the right of a county or municipality to regulate APMs and operators of APMs and supersedes any existing law of a county or municipality that regulates APMs and operators of APMs. However, it does *not* limit the power of a county or municipality to license APMs and APM operators or prohibit the installation or operation of APMs within the county or municipality.

Current Law: The bill establishes a regulatory framework similar to that already in place for dealers of secondhand precious metal objects. DLLR regulates dealers who acquire and trade secondhand precious metal objects, including gold and silver. Dealers of these objects, including individuals, retail jewelers, and pawnbrokers who transact in secondhand precious metal objects, must be licensed before doing business in the State in accordance with the Maryland Secondhand Precious Metal Object Dealers and Pawnbrokers Act.

In general, a secondhand precious metal object dealer may only purchase secondhand precious metal objects at the address for which the dealer's license is issued.

Background: Baltimore City specifically banned APMs in September 2013. Montgomery and Prince George's counties also prohibit APMs under their respective secondhand objects laws.

Chapter 562 of 2009 established electronic reporting requirements for secondhand precious metal object dealers, thereby repealing the authorization that allowed dealers to mail or submit paper transaction records to law enforcement. The State uses the RAPID system to transmit acquisition information from secondhand precious metal object dealers to local law enforcement through an Internet interface. RAPID enables police departments statewide to immediately gain access to timely information about property that has been sold to pawnbrokers, precious metal dealers, or vehicle salvage yards. Since the inception of the RAPID system, law enforcement has recovered more than \$13 million in stolen property.

Total fees for State and national CHRCs through the CJIS Central Repository are \$54.50 per individual.

APMs

A California-based company, ecoATM, has recently expanded its line of APMs into the State. According to the company's website, there are fewer than 20 ecoATMs in Maryland (mostly at shopping malls) capable of accepting cellular phones and other

consumer electronic devices in exchange for an immediate cash payment. The company states that it voluntarily holds all inventory for a minimum of 30 days (in San Diego, California) from the collection date before moving the devices to buyers. The company states that it follows any applicable laws that require longer holding periods for select locations and that it works with law enforcement to return stolen items.

Other APMs, such as those owned by Alula, are capable of accepting gift cards in exchange for a cash payment. Alula APMs are located in several nearby states, including New Jersey and Pennsylvania.

State Fiscal Effect: General fund expenditures for DLLR increase by \$36,900 in fiscal 2015, which accounts for the bill’s October 1, 2014 effective date. This estimate reflects the cost of hiring one half-time administrator to provide ongoing support for the licensing program established under the bill. It includes a salary, fringe benefits, one-time start-up costs, ongoing operating expenses, and one-time programming costs.

Position	0.5
Salary and Fringe Benefits	\$22,345
Programming Costs	10,000
Other Operating Expenses	<u>4,588</u>
Total FY 2015 DLLR Expenditures	\$36,933

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses and the termination of one-time costs.

General fund revenues increase minimally beginning in fiscal 2015 from license and renewal fees for buyers. The amount cannot be reliably estimated at this time but is expected to be minimal. Penalty provisions do not materially affect State general fund revenues.

DSP advises that APMs can submit the required transaction records using the RAPID system already in place for secondhand precious metal object dealers. As the bill does not authorize a registration fee for APMs, general fund expenditures increase minimally for DSP beginning in fiscal 2015 to pay for APM registrations with the RAPID system. Each APM must be registered separately and a registration costs DSP \$210 annually. This estimate assumes that the information submitted to the RAPID system by buyers can be received, stored, and accessed with existing resources. General fund expenditures may increase to the extent that the bill requires additional information technology resources for the RAPID system to accommodate information submitted under the bill. DSP can otherwise enforce the bill with existing budgeted resources.

CJIS can handle the anticipated increase in CHRCs with existing resources. There is no cost to the State for the checks, as applicants are responsible for payment of the fees.

Additional Information

Prior Introductions: None.

Cross File: HB 918 (Delegate Costa, *et al.*) - Economic Matters.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of State Police; Judiciary (Administrative Office of the Courts); Governor's Office of Crime Control and Prevention; Department of Public Safety and Correctional Services; Office of Administrative Hearings; Maryland Municipal League; Maryland Association of Counties; Baltimore City; Harford and Montgomery counties; Town of Berlin; ecoATM.com; Department of Legislative Services

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