

**Department of Legislative Services**  
Maryland General Assembly  
2018 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

Senate Bill 90  
Finance

(Senator Middleton)

Economic Matters

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**Electronic Nicotine Delivery Systems Licenses – Modifications**

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This emergency bill repeals a specific prohibition against the sale of electronic nicotine delivery systems (ENDS) by an ENDS retailer to a consumer through the mail or an electronic network. The bill also allows an ENDS wholesaler distributor or importer to sell ENDS to a vape shop vendor and repeals an outdated reference to an ENDS storage warehouse.

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**Fiscal Summary**

**State Effect:** The Comptroller and the Judiciary (Administrative Office of the Courts) can handle any additional requirements with existing budgeted resources. State finances are not otherwise materially affected.

**Local Effect:** None.

**Small Business Effect:** Meaningful.

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**Analysis**

**Current Law:** Chapter 814 of 2017 established a licensing and regulatory framework for the manufacture, wholesale distribution, and retail sale of ENDS (*i.e.*, e-cigarettes, other similar devices, and their components). A person with a tobacco-related license is authorized to manufacture, distribute, or sell ENDS in the same capacity as the person is licensed for tobacco and does not need a separate ENDS license.

### *Direct Sale to Consumers by ENDS Licensees*

Three ENDS licenses authorize the sale of ENDS to consumers under certain circumstances: manufacturer, retailer, and vape shop vendor. However, only the manufacturer license explicitly authorizes the sale of ENDS to consumers through the mail or an electronic network. The retailer license explicitly prohibits such sale, and the vape shop vendor license does not explicitly prohibit or authorize such sale.

There is no specific penalty for the unauthorized sale or shipment of ENDS directly to consumers. The Comptroller has disciplinary power over licensees, such as suspending or revoking a license, and a violation of ENDS-related laws is a misdemeanor and subject to a maximum penalty of a \$1,000 fine and/or 30 days imprisonment.

### *Direct Sale to Consumers by Tobacco Licensees*

Other than under limited circumstances, tobacco-related licenses do not allow the sale or shipment of cigarettes or other tobacco products (OTPs) to consumers through the mail or an electronic network. However, up to two cartons of cigarettes, or two packages of OTPs, may be delivered directly to a consumer if they are delivered by the appropriate licensee or an employee of the licensee. The prohibition also does not extend to premium cigars or pipe tobacco if sold by a licensed OTP retailer or tobacconist.

A violation by a licensee is subject to discipline by the Comptroller and is also a felony and subject to a maximum penalty of a \$50 fine, per carton of cigarettes/package of OTPs, and/or two years imprisonment. A violation by a person that is not a licensee is a felony and subject to the same potential fine and criminal penalty.

### *Sale of ENDS by Wholesalers to Vape Shop Vendors*

An ENDS wholesaler distributor or importer license does not authorize the sale of ENDS to a vape shop vendor – only to another ENDS wholesaler or an ENDS retailer. Likewise, a vape shop vendor license does not authorize the purchase of ENDS from an ENDS wholesaler – only from an ENDS manufacturer.

**Background:** ENDS as defined in statute covers several technologies and their associated components, including electronic cigarettes (or e-cigarettes), vaporizers, vape pens, and vaping liquid. Typically these are battery-operated devices with cartridges or reservoirs for liquids (e-liquids or vaping liquids) that contain nicotine, flavoring chemicals, propylene glycol, glycerin, and other ingredients. When a user draws on an electronic cigarette or similar device, the liquid is heated into an aerosol that the user then inhales.

## *Federal Regulation*

In 2016, the U.S. Food and Drug Administration finalized a rule extending its regulatory authority over tobacco products to include ENDS and components or parts of regulated tobacco products (*e.g.*, e-liquid). The regulations prohibit retailers from selling ENDS to minors and require retailers to check the photo identification of any individual younger than age 27 who attempts to purchase ENDS.

## *Electronic Cigarette Use*

Electronic cigarette use has been on the rise since first introduced in the United States in the mid-2000s. According to the U.S. Centers for Disease Control and Prevention, between 2011 and 2015, electronic cigarette use among high school students increased from 1.5% to 16%. The trend appears to be continuing; a 2017 National Institutes of Health survey of high school seniors found that 27.8% had reported “vaping” in the prior year.

**Small Business Effect:** The bill authorizes ENDS retailers, which are primarily small businesses, to ship ENDS directly to consumers through an electronic or mail network. With consumer preferences trending toward the home delivery of products, this has a significant, positive impact on the businesses that have the capability to do so. Conversely, small businesses that do not have the capability to sell and ship online may be adversely affected as customers choose to purchase ENDS online from the businesses that do.

Small vape shop vendors also benefit from the ability to purchase ENDS from an ENDS wholesaler, instead of having to purchase directly from an ENDS manufacturer.

**Additional Comments:** The Comptroller advises that it is not enforcing the 2017 ENDS law (Chapter 814) until the direct ENDS sale/shipment issue addressed by the bill is resolved.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 47 (Delegate Jameson) - Economic Matters.

**Information Source(s):** Comptroller’s Office; Judiciary (Administrative Office of the Courts); U.S. Food and Drug Administration; U.S. Centers for Disease Control and Prevention; National Institutes of Health; Department of Legislative Services

**Fiscal Note History:**  
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