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MARYLAND ALCOHOL, TOBACCO, AND CANNABIS COMMISSION

Tobacco Compliance Bulletin TCB – 24-002

**** REFERRAL REQUIREMENTS FOR LOCAL HEALTH AND POLICE DEPARTMENTS THAT SEEK TO PURSUE ADMINISTRATIVE ACTION AGAINST TOBACCO LICENSEES FOR TOBACCO SALES TO INDIVIDUALS UNDER 21 ****

Subject: Local health and police departments should follow certain referral requirements related to Tobacco Sales to Individuals Under 21 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. This bulletin outlines the agency’s procedure for referrals and administrative hearings based on underage sales of tobacco products.

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 involving selling cigarettes, other tobacco products, and/or electronic smoking devices to an individual under the age of 21. Citations for unlawful sales 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 (“Distribution of tobacco product to minor”). Retailers may also be issued a citation 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 a successful administrative proceeding. 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) documented Sales to Individuals Under 21 related violations that occurred at the same licensed location within 12 months. The primary triggering violation should include a conviction or admission of guilt on the civil or criminal citation, but subsequent violations may be shown through inspections, Synar enforcement actions, or similar events. In other words, agencies should 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, accompanied by at least one additional violation or incident within a 1-year period.

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 minor, tobacco products, sales receipt, etc.)
 - Copy of the citation(s) issued to the staff of the licensed location.
 - 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 Acting Deputy 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, Acting Deputy Director
Field Enforcement Division
1215 East Fort Avenue, Suite 300
Baltimore, Maryland 21230

Upon submission, these documents will be reviewed to determine if there is a sufficient basis for administrative action. The ATCC will contact the point of contact identified by the reporting agency if there is any additional information needed.

Second, when 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 as described in our hearing procedures. The ATCC and reporting agency will work together to coordinate a hearing date and time that allows for witnesses from the reporting agency to participate. The hearing officer will 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 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.

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Alcohol, Tobacco, and Cannabis Commission

