



Select Federal and Maryland Tobacco Laws

The Maryland General Assembly and the federal government have passed several tobacco control laws in recent years. These typically come after years-long campaigns and follow the passage of similar laws across the country. Although most Maryland counties enjoy plenary power to pass public health laws, the *Altadis* decision has prevented counties from adopting such provisions locally, forcing them to wait for the State or federal government to act.¹ Even when a state or federal law exists, local governments may not have authority to enforce these provisions. Lacking the ability to pass local restrictions because of preemption delays the positive public health impacts these laws provide and prevents complimentary enforcement of state and federal laws.

Law	Federal	Maryland
Tobacco 21	X	X
Flavor Restrictions	X	X ²
Product Placement	X	
ID Check	X	
Cigarette Minimum Pack Size	X	X

¹ Note that of 24 jurisdictions in Maryland, 18 have the structural authority to enact these laws. This is a legal issue unrelated to *Altadis*, and due to their governmental structure. More specifically, Baltimore City and the following counties have the authority to enact local laws: Allegany, Anne Arundel, Caroline, Charles, Baltimore, Cecil, Dorchester, Frederick, Harford, Howard, Kent, Montgomery, Prince George's, Queen Anne's, Talbot, Wicomico, and Worcester.

² The Comptroller of Maryland has prohibited the sale of a narrow class of flavored ESDs that are prohibited by federal law. This is only enforceable by the Comptroller.

Tobacco 21: Tobacco 21 laws prevent retailers from selling tobacco products, including electronic smoking devices (ESDs), to those under age 21. In jurisdictions with Tobacco 21 laws, smoking rates, tobacco use initiation, and adolescent use decline.³ In 2019, both Maryland and the federal government passed Tobacco 21, restricting the sale of tobacco products, including ESDs to those under age 21. Until the Maryland law became effective, local jurisdictions were unable to pass laws increasing the sales age, though several expressed interest for years prior to the state law’s enactment. Given the youth vape epidemic that arose as locals awaited state and federal action, there is direct harm from the preemption of local jurisdictions on Tobacco 21.

Flavor Restrictions: “Flavor restrictions” refer to any limitation on a retailer’s ability to sell a flavored tobacco product. The Tobacco Control Act, signed by President Obama in 2009, banned the sale of flavored cigarettes, excluding menthol. In 2016, the FDA exercised its regulatory authority by expanding the definition of tobacco products to include ESDs, but did not ban the sale of flavored ESDs or vape liquid. On February 2, 2020 the FDA released guidance prohibiting the manufacturing, distribution, and sale of any flavored, cartridge-based ESD other than menthol or tobacco flavor, all ESDs for which the manufacturer has not taken appropriate action to prevent minor access, and ESDs targeted to minors or likely to promote minor use.

Although the Maryland General Assembly considered a comprehensive bill banning flavored tobacco products during the 2020 legislative session, the bill did not pass. The Comptroller of Maryland has prohibited the sale of a narrow class of flavored ESDs that are prohibited under federal law; that provision is only enforceable by the Comptroller. Local jurisdictions cannot pass a plenary provision like that considered in the 2020 session nor expand upon or enforce the narrow prohibition issued by the Comptroller. As with Tobacco 21, counties await state or federal action on flavored tobacco products while youth continue to be enticed into addiction by those products.

Product Placement: Product placement restrictions limit the location in a retail establishment where products may be accessed by the consumer. Except in adult-only facilities, the Tobacco Control Act and FDA regulations prohibit self-service displays of cigarettes and smokeless tobacco. Federal law does not impose these restrictions on other products such as cigars or ESDs. Self-service displays increase availability and accessibility of tobacco products, particularly to youth, and encourage impulse purchases.⁴ They also control the accessibility and visibility of tobacco products.⁵ While there is no statewide provision and despite the *Altadis* decision, some locals in Maryland have enacted and regularly enforce similar provisions.

ID check: At the federal level, retailers are required to check the ID of anyone who appears under age 27. This applies to all tobacco products, including ESDs. There is no similar requirement at the state level in Maryland. Baltimore County passed and enforces an ID check provision. Anecdotally, they believe enforcing this law has reduced the likelihood that retailers sell tobacco products to minors. We believe this policy option may remain available for local jurisdictions.

³ Tobacco 21, COUNTERTOBACCO.ORG, <https://countertobacco.org/policy/tobacco-21/> (last visited May 7, 2020).

⁴ Restricting Product Placement, COUNTERTOBACCO.ORG, <https://countertobacco.org/policy/restricting-product-placement/> (last visited June 15, 2020).

⁵ Restricting Product Placement, COUNTERTOBACCO.ORG, <https://countertobacco.org/policy/restricting-product-placement/> (last visited June 15, 2020).

Minimum Pack Size: Minimum pack size laws set a minimum number of tobacco products that must be in each package. Regulating pack size increases the price of access and thereby decreases accessibility, particularly for youth. Increasing the price of tobacco is associated with reducing initiation rates as well as decreasing youth and adult use.⁶ According to state and federal law, cigarettes may only be sold in packs of 20. As a result of the *Altadis* decision, Baltimore City has been unable to enforce its longstanding law prohibiting the sale of single cigarettes, or “loosies,” despite that its existence predates the *Altadis* decision.

⁶ Centers for Disease Control (CDC), State Cigarette Minimum Price Laws--United States, 2009, 59 MORBIDITY & MORTALITY WEEKLY REPORT 389, 389 (Apr. 9, 2009), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5913a2.htm>.