

Maryland General Assembly: What to Expect in 2020

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Overview



- Federal Updates
- The Maryland Legislative Process
- Tobacco Bills in 2020



Federal Tobacco Updates

TOBACCO 21

On December 20, 2019, the President signed legislation to raise the federal minimum age of sale of tobacco products from 18 to 21 years. It is **now** illegal for a retailer to sell any tobacco product – including cigarettes, cigars and e-cigarettes – to anyone under 21. FDA will provide additional details on this issue as they become available.



-  No grandfathering clause.
-  No military exemptions.



Federal Tobacco Updates

TOBACCO 21

Impact in Maryland:

- ☐ State and local enforcement efforts are limited to state/local law; cannot cite for sale to military 18-20.
-  Comptroller signage enforcement discretion
-  Potential changes to align in Maryland GA 2020?; change your local law?
- ☐ Will likely impact Synar and Maryland's federal enforcement program but those details are being worked out.



Federal Tobacco Updates

FLAVORED ELECTRONIC SMOKING DEVICES/VAPE PRODUCTS

January 2, 2020:

FDA released a Guidance explaining the Agency's new approach to regulating ESDs with regard to flavors.

The Guidance is to go into effect 30 days after the announcement, on February 2, 2020.

FDA notes that the May 12, 2020, PMTA filing date remains in place.*



Federal Tobacco Updates

FLAVORED ELECTRONIC SMOKING DEVICES/VAPE PRODUCTS

The Guidance prohibits the manufacturing, distribution, and sale of:

- 🍒 Any flavored, cartridge-based ESDs other than **menthol** or tobacco flavor;
- 🍒 All ESDs for which the manufacturer has not taken adequate measures to prevent minors' access; and
- 🍒 ESDs targeted to minors or likely to promote the use of ESDs by minors.

What does this mean?



Federal Tobacco Updates

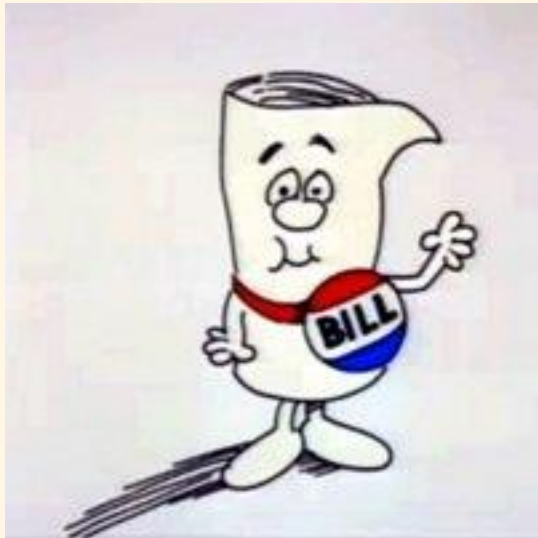
FLAVORED ELECTRONIC SMOKING DEVICES/VAPE PRODUCTS

- ✗ Only menthol or nicotine flavored pod devices, like JUUL, Suorin, Mi-Pod.
- ✗ Products marketed to kids—perhaps flavors like gummy bear or liquid refills that look like juice boxes—are not permitted. *(Yes; this is somewhat open to interpretation.)*

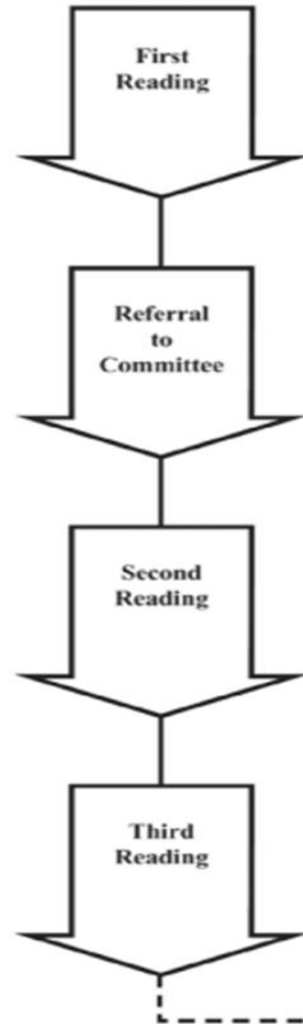
✓ **All flavors are permitted for tank systems**
(unless violate youth targeting provision).



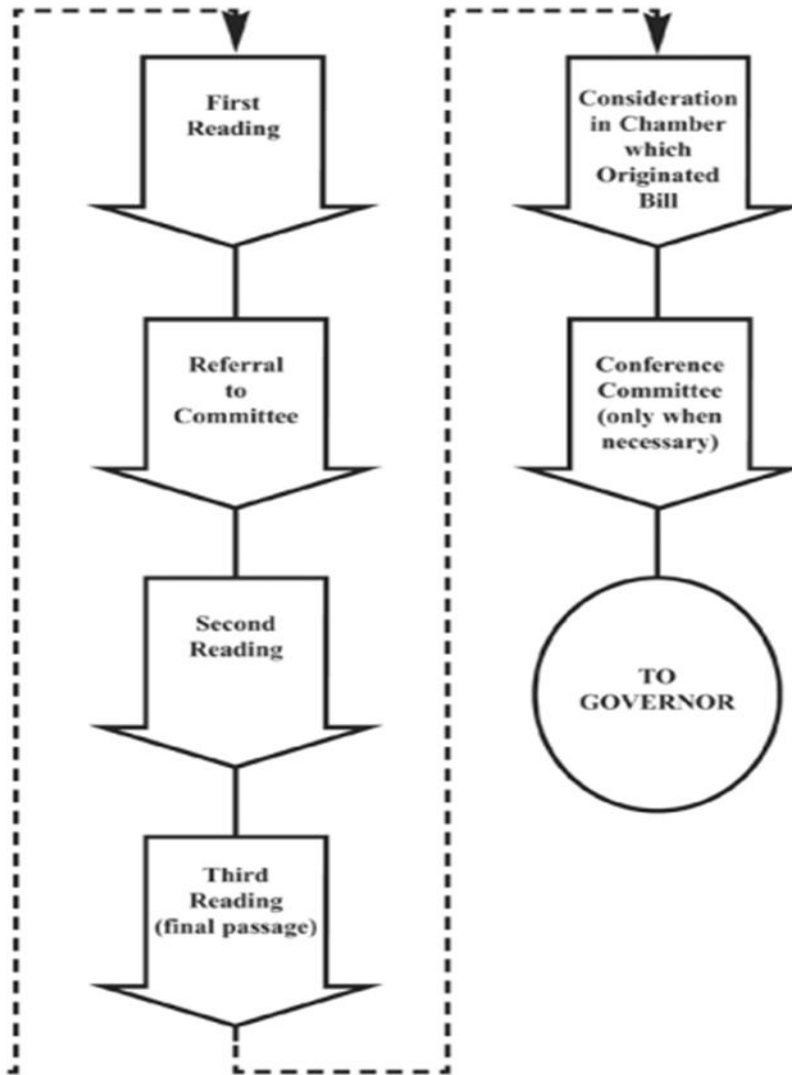
The Maryland Legislative Process

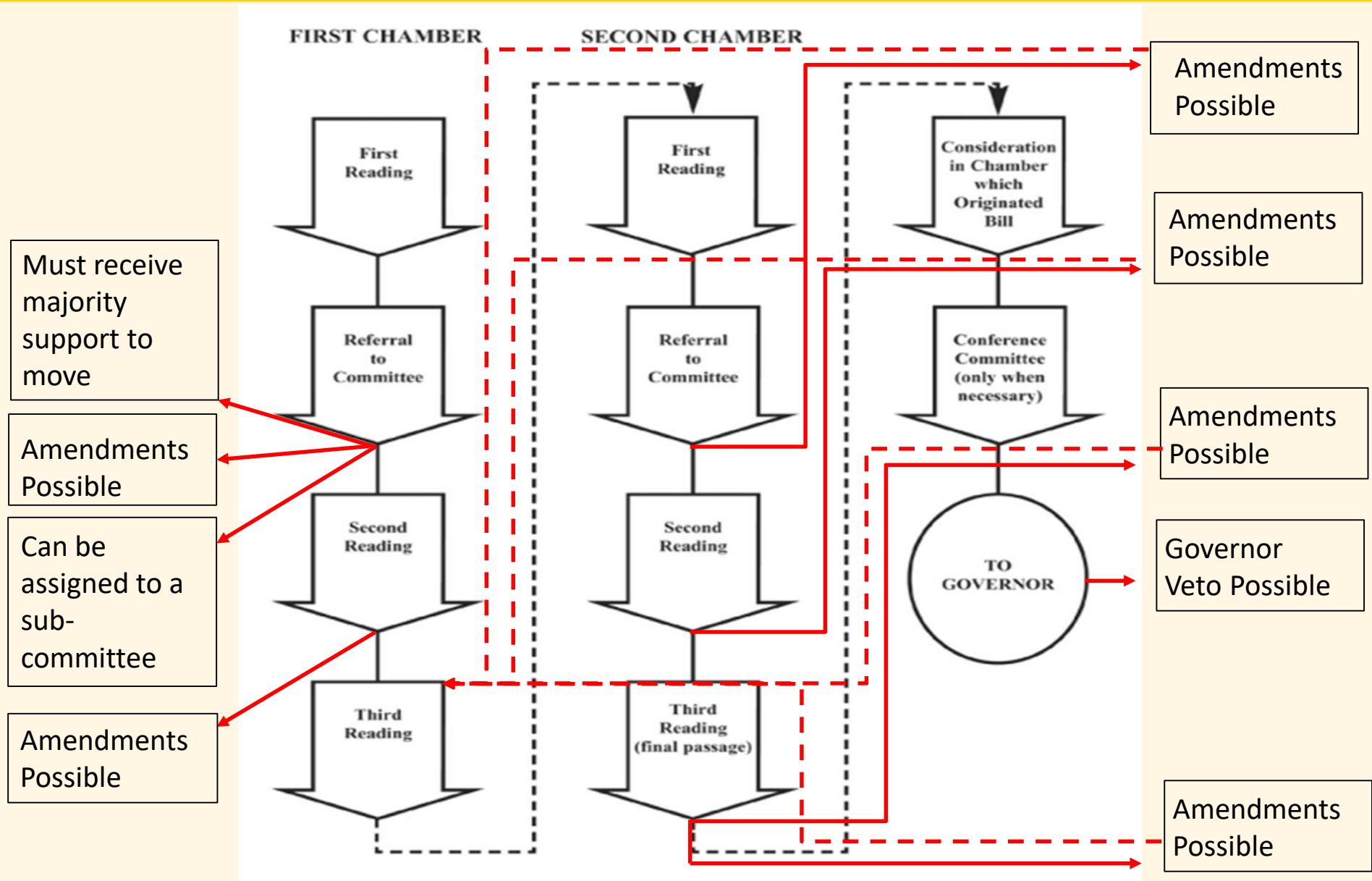


FIRST CHAMBER



SECOND CHAMBER







Maryland Legislative Session

- January 8, 2020 – April 6, 2020 (90 Days)
- House
 - Economic Matters
 - Health and Government Operations
- Senate
 - Finance
 - Education, Health, and Environmental Affairs

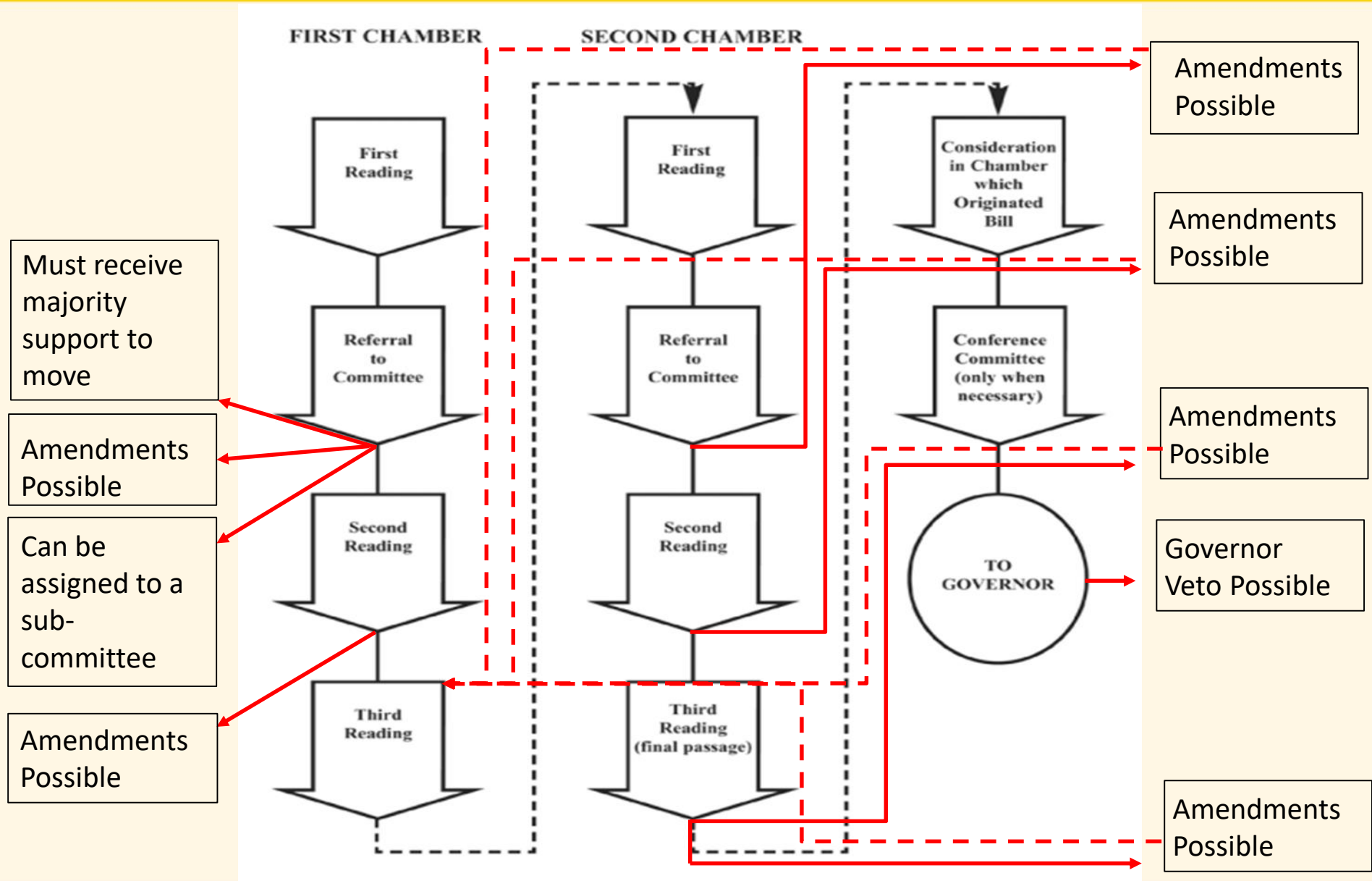


How Laws are Made

1st – There is an Idea, a Problem, an Opportunity for Improvement

2nd – A Bill is Created

3rd – The Bill Must Move Through the Legislative Process



Maryland General Assembly:

Dates of Interest

January	8	GENERAL ASSEMBLY CONVENES (<i>noon, Wednesday</i>)
	15	Final date for the Governor to introduce budget bill
	15	Final Date for the Governor to introduce capital budget bill
	17	<i>10th Day</i> – Final date for submission of Executive Orders reorganizing the Executive Branch of State Government; either Chamber may disapprove by resolution within 50 days
	17	<i>10th Day</i> – SENATE AND HOUSE BILL REQUEST GUARANTEE DATE
	20	<i>13th Day</i> – Administration bills introduced in the Senate after this date referred to Senate Rules Committee
	TBA	Governor delivers the State of the State Address (<i>noon</i>)
February	3	<i>27th Day</i> – SENATE BILL INTRODUCTION DATE Senate bills introduced after this date referred to the Senate Rules Committee
	4	Special Primary Election
	6	Day before House Bill Introduction Date; “Hopper” will close at 5:00 P.M.
	7	<i>31st Day</i> – HOUSE BILL INTRODUCTION DATE House bills introduced after this date referred to the House Rules and Executive Nominations Committee
	16	<i>40th Day</i> – “Green Bag” appointments submitted by Governor (<i>Delivered on Friday, February 14</i>)
March	2	<i>55th Day</i> – Final date for introduction of bills without suspension of Rules
	10	<i>63rd Day</i> – Committee Reporting Courtesy Date Each Chamber’s committees to report their own bills by this date
	16	<i>69th Day</i> – Opposite Chamber Bill Crossover Date Each Chamber to send to other Chamber those bills it intends to pass favorably Opposite Chamber bills received after this date subject to referral to Rules Committees (Senate Rule 32(c), House Courtesy Date)
	30	<i>83rd Day</i> – Budget bill to be passed by both Chambers
April	6	<i>90th Day</i> – ADJOURNMENT “SINE DIE” (<i>Monday</i>)
	28	Maryland Presidential Primary Election and Special General Election
May	6	Final date for an extended session (<i>Wednesday</i>)

The Role You Can Play Once a Bill is Filed

- Start Talking with Committee Members
 - In person visits; provide one-pager with your contact information
 - Bring constituents with you
- Start Educating the Public
 - Letters to the Editor/Secure OpEd.
 - Press releases/conferences
- Hearings
 - Little notice
 - Prepare to Testify
 - Testify

Advocacy vs. Lobbying

- How are your activities with the state legislature limited?
- What is lobbying?
- How is lobbying restricted?
- What is allowed?

Definitions

Lobbying

“To conduct activities aimed at influencing public officials and especially members of a legislative body *on legislation*.”

Advocacy

“The act or process of supporting a particular cause or proposal.”

...So what's the difference?

Direct Lobbying

Three Elements:

1. Direct written or oral communication to a legislator, legislative staff, or other government official working on legislation
2. That reflects a view (for or against),
3. Specific legislation.
 - “Specific legislation” = introduced bills, legislative proposals not yet introduced, budget bills, ballot measures, U.S. Treaties and confirmation of appointees

Grassroots Lobbying

Four Elements:

1. A written or oral communication to the public (e.g., speeches, ads, op-eds, blog)
2. That reflects a view
3. On specific legislation, and
4. Includes a call to action.

What constitutes a call to action?

- Asks audience to contact a legislator;
- Identifies a legislator as being the audience's representative;
- Provides legislator's contact information;
- Provides a vehicle for contacting the legislator (e.g., form email, petition);
- Identifies a legislator's position on the legislation as being undecided or opposing the communication's viewpoint;
- Identifies a legislator as sitting on the voting committee; OR
- A paid ad that expresses a view on prominent legislation within 2 weeks of a vote, even if it doesn't contain a CTA.

While all lobbying is advocacy, not all advocacy is lobbying.

- Advocacy and lobbying are similar, and the distinction is not always clear.
- There are no formal restrictions on advocacy.
- There are restrictions/rules on lobbying.

Who is Regulated: Legislative Advocacy

An entity is required to register as a lobbyist if:

1. The person communicates **in the presence** of an official or employee in the legislative branch or executive branch for the purpose of influencing any legislative action during a lobbying reporting period and **incurs expenses of \$500** or more other than for personal travel or subsistence expenses; or **earns \$2,500 or more** as compensation, from all lobbying employers cumulatively, for all such communication and activities; or
2. The person is **not in-the-presence** of an official or employee but communicates with an official or employee for the purpose of influencing legislative action and **earns at least \$5,000 from all lobbying employers** cumulatively as compensation for all such communication and activities relating to the communication during a reporting period for activities aimed at influencing legislative action.

Who is Regulated Grassroots Advocacy

The Ethics Law requires registration for any person, group, organization or business entity that **expends \$2,000**, including salaries, contractual employees, postage, telecommunication services, electronic services, advertising, printing and delivery services, in a reporting period for the express purpose of soliciting others to communicate with any official to influence any legislative or executive action.

Exceptions

1. Appearances as **part of the official duties** of a duly elected or appointed official or employee of the State or a political subdivision of the State, or of the United States, and not on behalf of any other entity.
1. Actions of a **member of the news media** to the extent the actions are in the ordinary course of gathering and disseminating news or making editorial comments to the general public.
2. The representation of a **bona fide religious organization** solely for the purpose of protecting the right of its own members to practice the doctrine of the organization.
3. Appearances as part of the official duties of an officer, director, member, or employee of an **association engaged exclusively in lobbying for counties and municipalities** and not on behalf of any other entity.
4. Actions as part of the **official duties of a trustee, administrator, or a faculty member of a non-profit independent college or university in the State** provided the official duties of the individual do not consist primarily of attempting to influence legislative or executive action.

Exemptions

1. **Appearances** before the **General Assembly** or any committee or subcommittee **at the specific request of the body involved**.
2. **Appearances** before an **executive unit** at the **specific request of the executive unit** involved provided the individual engages in no other acts during the reporting period requiring registration.
3. **An elementary, secondary, or postsecondary school student** or student organization that communicates as **part of a course or student activity** is not subject to the registration requirements based **solely on the \$500.00 expense threshold**.
4. **Appearances** before a legislative committee at the **specific invitation or request of regulated lobbyist** provided no other act is undertaken for which registration is required and provided the witness notifies the committee that the testimony is at the request of a regulated lobbyist.
5. **Professional services in drafting bills** or in advising and rendering opinions to clients as to the construction and effect of proposed or pending legislation where these services do not otherwise constitute activities as a regulated lobbyist.
6. **Appearances** before an executive unit **at the specific request of a regulated lobbyist** if the witness notifies the executive unit that the testimony is at the request of the regulated lobbyist, and the individual engages in no other acts during the reporting period requiring registration.

Protections/Restrictions for State Employees

Employment by the State does not affect any right or obligation of a citizen under the Constitution and laws of the United States or under the Constitution and laws of the State.

Except as otherwise provided in this section or by federal law, a State employee:

- (i) may freely participate in any political activity and express any political opinion; and
- (ii) may not be required to provide any political service.

An employee may not:

- (i) engage in political activity while on the job during working hours; or
- (ii) advocate the overthrow of the government by unconstitutional or violent means.

A public official or an employee of the State may not require any State employee to make a political contribution.

State Personnel and Pensions Article, §2-304

General Assembly of Maryland 2018 Session - Public Health Tracker

File Edit View Insert Format Data Tools Add-ons Help Last edit was on October 31

Bill #	Cross File	Prior Session History	Topic	Title	Description	Hearing & Voting	Lead Sponsor(s)	Cross Bill Status	Notes
HB0047	SB0090	N/A	Business Regulation and Occupations	Electronic Nicotine Delivery Systems Retailer License - Sales Through Mail or Electronic Network	Allows ENDS retailers to sell directly to consumers through mail, telephone, or other electronic network.	In the House- Returned Passed	Delegate Jameson	In the Senate- Returned Passed	Bill is an Emergency Bill
HB0606	N/A	Introduced in a prior session as HB0703 Session: 2017 Regular Session	Appropriations	Public Health- Tobacco Control Funding	Requires \$21,000,000 in funding for fiscal year 2020 and each year thereafter for activities related to reducing tobacco use in Maryland.	Hearing on 2/27 at 1:00 p.m. in House Appropriations	Delegate Rosenberg	N/A	
HB0953	SB0456	N/A	Business Regulation and Occupations	Tobacco Products - Minimum Age and Civil Fines	Prohibiting the distribution of tobacco products to any individuals under the age of 21, and requires the person distributing to check a government-issued identification of any prospective purchaser who the distributor reasonably believes to be under the age of 30 years old in order to determine the date of birth of the prospective purchaser or recipient.	Hearing on 2/28 at 1:00 p.m. in House Economic Matters	Delegate Morales	Hearing 2/15 at 1:00 p.m. in Senate Finance	
HB1094	N/A	N/A	Criminal Law- Distribution to Minors	Distribution of Electronic Cigarettes to Minors- Prohibition and Penalties	Prohibits under criminal law a person that distributes tobacco products for commercial purposes from distributing to a minor an electronic nicotine delivery system. Further, prohibits minors from using, possessing, obtaining or attempting to obtain an electronic nicotine delivery system.	In the House- Returned Passed	Delegate Rosenberg	N/A	
HB1737	SB1266	N/A	Business Regulation and Occupations	Charles County- Cigarette Retailers- County License Fee	Increases the fee from \$25 to \$125 for a county license to sell cigarettes at retail in Charles County.	In the House- Unfavorable Report by Economic Matters	Charles County Delegation	In the House- Rereferred to Economic Matters	
HB1752	N/A	N/A	Health Occupations	Aids for the Cessation of Tobacco Product Use- Prescribing and Dispensing by Pharmacists and Health Insurance Coverage	Authorizes a pharmacist who meets certain requirements to prescribe and dispense medications approved by the FDA as an aid for the cessation of the use of tobacco products.	First Reading House Rules and Executive Nominations	Delegate Hayes	N/A	

Sign up for Our Policy Updates!

- Injury Prevention
 - Tobacco
 - School Health
 - Marijuana
 - Alcohol
- Food
- Opioids
- Gambling
- Other

Email Blair Inniss at binniss@law.umaryland.edu to be added to our listserv.



2020 MD Tobacco Legislation

HB3: Business Regulation - Flavored Tobacco Products – Prohibition

- Prohibits the manufacturing, shipping, importing, or selling of flavored tobacco products in MD
- Violators are guilty of a misdemeanor and subject to a fine of \$1,000 or imprisonment not exceeding 30 days or both
- Economic Matters and Health and Government Operations
- Emergency bill – effective upon enactment

SB54: Electronic Smoking Devices - Added Flavoring - Prohibition on Shipping, Import, or Sale

- Prohibits shipping, importing, or selling any ESD to which an artificial or natural flavoring, other than tobacco, is added to impart a particular aroma or taste
- Finance
- Emergency bill – effective upon enactment

Potential Legislation

- Scope of Practice – Permit pharmacists to prescribe tobacco cessation and/or NRT to patients
- Taxation – Increase on cigarette and OTP

Questions?

Contact Information

Legal Resource Center

publichealth@law.umaryland.edu

(410) 706-0842