
Clerks of the Circuit Courts and Business Licensing

**Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland**

September 24, 2019

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Clerks of the Circuit Courts and Business Licensing

Overview

The clerks of the circuit courts issue various State and local business licenses and provide general information to the public regarding business licensing requirements. Many businesses must obtain one or more clerk-issued licenses in order to legally operate in the State. This document provides an overview of the types of business licenses issued through the clerks, with additional emphasis on tobacco-related licenses; licensing requirements; the distribution of licensing revenue; and the monitoring and enforcement of business licenses.

Types of Business Licenses Issued through the Clerks

Licenses to Sell Tobacco Products at Retail

In the State, a business engaged in the manufacture, wholesale distribution, or retail sale of tobacco products must obtain an appropriate license. While the Comptroller's Office is responsible for issuing manufacturer and wholesaler licenses,¹ the clerks issue retail licenses.

Cigarette Retailer Licenses

Cigarette licensing is governed by Title 16 of the Business Regulation Article. To sell cigarettes at retail in the State, a person must obtain (1) a special cigarette retail license, which authorizes the licensee to act as a cigarette retailer and buy stamped cigarettes from a sub-wholesaler or wholesaler and (2) a county cigarette license, which authorizes the licensee to sell cigarettes at retail in a county.

Other Tobacco Products² Retailer and Tobacconist Licenses

Other tobacco products (OTP) licensing is governed by Title 16.5 of the Business Regulation Article. In the State, a person must obtain a county license through the local clerk of the circuit court to act as an OTP retailer or tobacconist.³ An OTP retailer license authorizes the licensee to (1) act as an OTP retailer; (2) buy other tobacco products on which the tobacco tax has been paid from an OTP wholesaler; and (3) buy premium cigars or pipe tobacco on which the

¹ Chapter 12 of 2019, effective June 1, 2020, transfers responsibility for issuing various tobacco-related wholesaler and manufacturer licenses from the Comptroller's Office to the Alcohol and Tobacco Commission.

² "Other tobacco products" means (1) any cigar or roll for smoking, other than a cigarette, made in whole or in part of tobacco or (2) any other tobacco or product made primarily from tobacco, other than a cigarette, that is intended for consumption by smoking or chewing as snuff.

³ A tobacconist is an OTP business that derives at least 70% of its revenue, measured by average daily receipts, from the sale of OTP and tobacco-related accessories.

tobacco tax has not been paid from an OTP manufacturer. A tobacconist license authorizes the licensee to (1) act as a tobacconist and (2) buy other tobacco products in which the tobacco tax has not been paid from an OTP manufacturer.

Electronic Nicotine Delivery Systems Retailer and Vape Shop Vender Licenses

Chapter 814 of 2017 established a licensing and regulatory framework for the manufacture, wholesale distribution, and retail sale of electronic nicotine delivery systems (ENDS). ENDS licensing is governed by Title 16.7 of the Business Regulation Article. Chapter 396 of 2019, effective October 1, 2019, renames ENDS to be electronic smoking devices (ESD) and makes related changes to the Business Regulation Article.⁴

In the State, a person generally must obtain a county license through the clerk to act as an ENDS (beginning October 1, 2019, ESD) retailer or vape shop vendor.⁵ An ENDS retailer license authorizes the licensee to (1) sell ENDS to consumers; (2) buy ENDS from an ENDS wholesaler distributor or wholesaler importer; (3) if the licensee holds an ENDS manufacturer license, sell ENDS manufactured under the manufacturer license at retail; and (4) except as otherwise prohibited or restricted under State or local law, distribute sample ENDS products to consumers in the State. A vape shop vendor license authorizes the licensee to (1) sell ENDS as a vape shop vendor; (2) if the licensee holds an ENDS manufacturer license, sell ENDS manufactured under the manufacturer license at retail; and (3) buy ENDS from an ENDS manufacturer, wholesaler distributor, or wholesaler importer.

A person licensed to sell cigarettes or other tobacco products at retail, however, may sell ENDS at retail without obtaining a separate license; pursuant to Business Regulation § 16.7-102, a person licensed under Title 16 or 16.5 of the Business Regulation Article may manufacture, distribute, or sell ENDS in the same capacity as the person is licensed under Title 16 or 16.5 and may not be required to obtain an additional license under Title 16.7.

⁴ The law specifies that an ESD is a device that can be used to deliver aerosolized or vaporized nicotine to an individual inhaling from the device. "ESD" includes an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, vaping liquid, and any component, part, or accessory of such a device, as specified "ESD" excludes a drug, device, or combination product authorized for sale by the U.S. Food and Drug Administration under the federal Food, Drug, and Cosmetic Act.

⁵ A vape shop vendor is an ESD business that derives at least 70% of its revenues, measured by average daily receipts, from the sale of ESDs and related accessories.

Miscellaneous Business Licenses

Other State business licenses issued through the clerks of the circuit courts are codified under Title 17 of the Business Regulation Article:

- amusement device licenses, including pinball and console machine licenses (Subtitle 4);
- construction and nonresident construction licenses (Subtitle 6);
- wholesale farm machinery dealer's licenses (Subtitle 7);
- garage licenses (Subtitle 8);
- peddler licenses (Subtitle 9);
- junk dealer and scrap metal processor licenses (Subtitle 10);
- laundry and dry cleaner licenses (Subtitle 11);
- storage warehouse licenses (Subtitle 12);
- outdoor music festival promoter's licenses (Subtitle 14);
- plumber's licenses (Subtitle 15);
- restaurant licenses (Subtitle 16);
- micro market licenses (Subtitle 17);
- trader's and chain store licenses (Subtitle 18);
- vending machine licenses (Subtitle 19);
- trading stamp issuer's licenses (Subtitle 20); and
- transient vendor licenses (Subtitle 20A).

The clerks also issue various local licenses. For example, the Clerk of the Circuit Court for Allegany County issues a county hawker's and peddler's license as well as county licenses to operate mechanical musical devices, pinball machines, and other coin-operated amusement devices.

Licensing Requirements

Fees and terms for State licenses issued through the clerks of the circuit courts are shown in **Exhibit 1**. Most fees are between \$15 and \$30, plus a \$2 issuance fee. In practice, licenses must be renewed annually, based on a May 1 through April 30 cycle, although there is some variation in how that requirement is specified in statute.

Exhibit 1
Licenses Issued by the Clerks of the Courts, Fees, and Terms

<u>License Type</u>	<u>License Fee</u>	<u>Issuance Fee</u>	<u>Expiration</u>
Special Cigarette Retail	\$30	\$2	April 30
County Cigarette		2	Year from Issuance
Montgomery County	125		
Cecil County	50		
All Other Counties	25		
OTP Retailer	15*	2	April 30
Tobacconist	15*	2	April 30
ENDS Retailer	25†	2	Date set by Clerk
Vape Shop Vendor	25†	2	Date set by Clerk
Misc. State Business Licenses	Varies by License Type	2	Generally April 30

ENDS: Electronic Nicotine Delivery Systems

ESD: Electronic Smoking Devices

OTP: Other Tobacco Products

*A licensed cigarette retailer seeking licensure as an OTP retailer or tobacconist is exempt from the license fee for an OTP retailer or tobacconist license.

†A person licensed to sell cigarettes or other tobacco products at retail under Title 16 or 16.5 may sell ENDS (beginning October 1, 2019, ESDs) at retail, in the same capacity as the person is licensed under Title 16 or 16.5, without obtaining an ENDS license.

Source: Department of Legislative Services

Licenses to Sell Tobacco Products at Retail

Cigarette Retailer Licenses

In order to sell cigarettes at retail, a person must obtain both a special cigarette retail and county cigarette license. These licenses are generally issued together.

Special Cigarette Retail License: To obtain a special cigarette retail license, an applicant must (1) submit an application to the clerk for each permanent or temporary place of business located in the same enclosure and operated by the same applicant and (2) pay to the clerk a \$30 license fee and \$2 issuance fee. The license expires April 30 following its effective date; a licensee may renew the license for an additional one-year term upon submission of a renewal application and payment of the \$30 annual license fee and \$2 issuance fee.

County Cigarette License: To obtain a county license, an applicant must (1) submit an application to the clerk and (2) pay the specified license fee and \$2 issuance fee. The applicable license fee is \$25 in a county other than Cecil or Montgomery; \$50 in Cecil County; and \$125 in Montgomery County. An applicant must obtain a county license for each place of business and, if applicable, each vending machine from which the applicant sells cigarettes. Per statute, the license expires one year from its effective date; in practice, the license expires April 30 each year.

Other Tobacco Products Retailer and Tobacconist Licenses

An applicant for licensure as an OTP retailer or tobacconist must (1) obtain a county license by submitting to the clerk an application for each permanent or temporary place of business located in the same enclosure and operated by the same applicant and (2) pay to the clerk a \$15 license fee and \$2 issuance fee. An applicant for an OTP retailer or tobacconist license who holds a license to act as a cigarette retailer, however, must pay only the \$2 issuance fee and is not required to pay the license fee.

An OTP retailer or tobacconist license expires April 30 following its effective date; a licensee may renew the license for an additional one-year term upon submission of a renewal application and payment of applicable fees.

Electronic Nicotine Delivery Systems Retailer and Vape Shop Vendor Licenses

An applicant for licensure as an ENDS retailer or vape shop vendor must (1) obtain a county license by submitting to the clerk an application for each permanent or temporary place of business located in the same enclosure and operated by the same applicant and (2) pay to the clerk a \$25 license fee and \$2 issuance fee. The license expires on the date set by the clerk; it may be renewed upon submission of a renewal application and payment of the \$25 annual license fee and \$2 issuance fee.

Exemption for Cigarette and Other Tobacco Products Licensees: A person licensed to sell cigarettes or other tobacco products at retail under Title 16 or 16.5 may sell ENDS at retail, in the same capacity as the person is licensed under Title 16 or 16.5, without obtaining an ENDS license.

Miscellaneous Business Licenses

License requirements, fees, and terms for miscellaneous business licenses issued by the clerks vary by license type and county. Generally, an applicant for a license under Title 17 of the Business Regulation Article must (1) submit to the clerk an application and a receipt or certificate for taxes, as specified, and (2) pay to the clerk the applicable license fee and a \$2 issuance fee. The minimum fee for licenses issued under Title 17 is \$2.50, and license fees may be prorated under specified circumstances. Unless otherwise specified, licenses take effect May 1 and expire April 30.

Trader's License

The trader's license accounts for the greatest number of licenses issued through the clerks of the circuit courts. A person who sells merchandise not manufactured by the business generally must obtain a trader's license for each store or fixed place of business that the person operates in the State. In fiscal 2019, there were 53,933 active trader's licenses in the State.

Tiered License Fee: An applicant for a trader's license generally must pay a tiered annual license fee based on the value of the person's stock-in-trade (*i.e.*, inventory). Fees range from \$15 to \$800 in a local jurisdiction other than Baltimore City or Baltimore County; \$20 to \$2,125 in Baltimore City; and \$20 to \$1,600 in Baltimore County. An inventory certification issued by the State Department of Assessments and Taxation is required for the purpose of determining the value of an applicant's stock-in-trade.

Uniform License Fee: Chapters 569 and 570 of 2019, effective October 1, 2019, authorize the governing body of a county or municipality to select a uniform trader's license fee over the existing tiered license fee. Selection of the uniform fee is irrevocable. The uniform fee is \$15, except for Baltimore City and Baltimore County, in which the uniform fee is \$20. All revenue from uniform trader's license fees accrues to the State general fund; under the tiered fee scheme, most license fee revenue is distributed to local jurisdictions.

Distribution of Funds

Business Regulation Article §17-206 governs the distribution of most fees received for licenses issued by the clerks, with a few exceptions. Generally, 92% of license fee revenue is distributed to local governments, and 8% of license fee revenue, in addition to 100% of issuance fee revenue, is distributed to the State general fund.

The clerk must distribute the local portion of the revenue to the municipality where the licensed business or activity is located, or, if the licensed business or activity is not located in a municipality, to the county. The 8% of license fee revenue distributed to the State general fund accounts for (1) a 5% fee of the office⁶ to which a clerk of a circuit court is generally entitled and (2) the 3% of license fee revenues authorized to defray the expenses of the State License Bureau.

The general distribution formula also applies to most county cigarette license fee revenue. However, special distribution provisions apply to county licenses issued in Montgomery County; from each \$125 license fee collected, the clerk must distribute \$25 to the Comptroller and \$100 to Montgomery County for the purpose of enforcing laws banning the sale or distribution of tobacco or tobacco products to minors.

⁶ In general, and with specified exceptions, a clerk of a circuit court is entitled to 5% of all public money that the clerk receives, collects, and pays over (Courts and Judicial Proceedings § 2-213).

Finally, unlike most other fees, the clerks distribute 100% of special cigarette retail license fees to the State general fund. The General Assembly intends that this fee revenue be used for the purpose of enforcing the Maryland Cigarette Sales Below Cost Act and administering other provisions of law related to cigarettes.

Licensure Activity

Licensure activity varies significantly across license types. **Exhibit 2** displays licensure activity in fiscal 2019 for State business licenses issued through the clerks of the circuit courts. Of the business licenses issued through the clerks, the trader's license, followed by the construction license, accounts for the greatest number of active licenses. Among tobacco licenses issued by the clerks, the cigarette licenses, followed by the OTP retailer license, account for the greatest number of active licenses. Compared to cigarette and OTP retailer licenses, relatively few ENDS retailer licenses were issued in fiscal 2019; as discussed elsewhere in this document, licensed cigarette and OTP retailers are authorized to sell ENDS at retail without obtaining ENDS retailer licenses.

Monitoring and Enforcement

The Comptroller's Office is generally responsible for monitoring and enforcement activity related to tobacco and other business licenses. The Field Enforcement Division within the Comptroller's Office enforces State revenue and licensing laws pertaining to alcohol, tobacco, trader's, and transient vendor's licenses, the sales and use tax, and motor fuel, among others. The State Licensing Bureau within the Field Enforcement Division is responsible for monitoring and enforcing the use of various business licenses and coordinating the issuance of business licenses with the clerks of the circuit courts. The [Maryland Business Licenses Online](#) system, which allows individuals to apply, edit, and renew State business licenses, facilitates information sharing between the clerks and the Comptroller's Office.

Chapter 12 of 2019, which takes effect June 1, 2020, establishes the Alcohol and Tobacco Commission (ATC) and transfers duties of the Field Enforcement Division pertaining to alcohol and tobacco enforcement to ATC. The Comptroller's Office, however, retains duties related to enforcement of alcohol and tobacco taxes.

Exhibit 2
Licenses Issued by the Clerks of the Courts
Fiscal 2019

Tobacco Licenses

<u>License Type</u>	<u>Number of Licenses</u>
Special Cigarette Retail	6,657
County Cigarette	6,633
OTP Retailer	6,436
Tobacconist	135
Vape Shop Vendor	116*
ENDS Retailer	49*

Miscellaneous Business Licenses

Trader's	53,933
Construction Firm	16,609
Chain Store	15,861
Restaurant	9,168
Nonresident Contractor	4,351
Vending Machine	1,360
Laundry and Dry Cleaner	691
Junk Dealer/Scrap Metal Processor	416
Plumber	399
Peddler	394
Storage Warehouse	295
Garage	147
Micro Market	15
Pinball Machine	7
Console Machine	2
Outdoor Music Festival Promoter	1
Wholesale Farm Machinery Dealer	1
Trading Stamp Issuer	0

ENDS: Electronic Nicotine Delivery Systems

ESD: Electronic Smoking Devices

OTP: Other Tobacco Products

*A person licensed to sell cigarettes or other tobacco products at retail under Title 16 or 16.5 may sell ENDS (beginning October 1, 2019, ESDs) at retail, in the same capacity as the person is licensed under Title 16 or 16.5, without obtaining an ENDS license.

Source: Judiciary (Administrative Office of the Courts); Department of Legislative Services