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**MEMORANDUM**

To: Rianna Matthews-Brown, Chief of Staff  
Rachel Sessa, Deputy Comptroller, Law and Oversight  
From: Michael Sheehan, Assistant Attorney General  
Re: Summary of the Law Regarding Service of Citations for Unlicensed Businesses  
Date: August 7, 2025

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You have asked our office to draft a memorandum addressing several questions: (1) why the Field Enforcement Bureau (“FEB”) cannot issue a criminal citation to a resident agent; (2) why FEB currently cannot mail a criminal citation; and (3) what the difference is between a criminal and civil citation. You have indicated that you plan to share this memorandum with the Business Licensing Reform Workgroup. Accordingly, this memorandum summarizes the relevant statutes and other authorities, and it is not intended as legal advice.

**Brief Answer:** Maryland law imposes criminal culpability on an agent of an unlicensed business. Under the common law, an employee is an agent of the employer. When an employee has sold a product from an unlicensed business to a customer or has opened the establishment to the public, he has “actually engaged in the unlicensed business” within the meaning of Bus. Reg. § 17-2106(b). Thus, the FEB’s practice of citing the employee, when the owner or officers of the business are not on site, is legally permitted.

Maryland law does not permit FEB officers to issue citations by mail to a business entity or its resident agent. Instead, an officer must serve the citation on a defendant “at the time of the issuance.” In other words, the citation must be served on site, which is why employees are frequently cited when no owner or corporate officer is present.

In addition to citations, Maryland law also allows FEB to initiate proceedings by other types of charging documents, such as a statement of charges.

## BACKGROUND

To enforce business license laws, FEB issues citations to unlicensed businesses and the business owners, their agents, or their corporate officers. When information about these individuals is lacking or when the owners or corporate officers are not on site, FEB, relying on the statutory language permitting officers to cite an on-site agent “who actually engaged in the unlicensed business,” issues citations to employees working on site. Bus. Reg. § 17-2106(b). This practice has raised concerns within the business community that, even if certain employees are *technically* liable under the law, issuing citations to them may seem unfair because the failings for which the citation is issued are attributable to the business entities or their officers, members, etc., rather than their employees, especially a business’s non-managerial employees.

During the 2025 legislative session, the General Assembly enacted [House Bill 577](#) and [Senate Bill 664](#). The bills require the Comptroller, in consultation with stakeholders, to study the process by which FEB enforces miscellaneous State business licenses under Title 17 of the Business Regulation Article, Annotated Code of Maryland.<sup>1</sup> The bills also require the Comptroller to submit a report to the General Assembly on or before December 1, 2025. The report shall include the following:

- A review of the process by which FEB enforces the miscellaneous State business licenses;
- A review and recommendation as to whether civil citations could be used rather than or in conjunction with criminal citations to enforce the miscellaneous State business licenses;
- Recommendations on how to ensure that FEB can properly identify and contact the owner, operator, or responsible party for a miscellaneous State business license;

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<sup>1</sup> The bills, as originally proposed (but not enacted), would have prohibited the Comptroller from issuing citations to individual employees of a noncompliant business. *See* House Bill 577 (2025) (text of first reading), available at <https://mgaleg.maryland.gov/2025RS/bills/hb/hb0577f.pdf>. Instead, license applicants would have been required to designate a “license representative” on an application, and the penalties for noncompliance with the licensing laws would have been applicable only to:

- (1) a person specified as the business owner in the license application;
- (2) an individual designated as a license representative;
- (3) for a corporation, the corporation or one or more officers of the corporation;
- (4) for a limited liability company:
  - (i) if the company does not have an operating agreement, one or more members; or
  - (ii) if the company has an operating agreement, one or more individuals who manage the business and affairs of the company;
- (5) for a limited liability partnership:
  - (i) if the partnership does not have a written partnership agreement, one or more general partners; or
  - (ii) if the partnership has a written partnership agreement, one or more individuals who manage the business and affairs of the partnership; and
- (6) for a business entity not identified under items (3) through (5) of this subsection, one or more individuals who manage the business and affairs of the entity.

*Id.* In her testimony in support of the bill, Comptroller Lierman stated that the problem with the current law “is that we are expected to issue those citations to somebody that we find even if it’s somebody who is not responsible for getting that license.” House of Delegates, Economic Matters Committee, Testimony of Comptroller B. Lierman, at 19:45 (Feb. 12, 2025) (available at [https://mgaleg.maryland.gov/mgaweb/Committees/Media/false?cmte=ecm&ys=2025RS&clip=ECM\\_2\\_12\\_2025\\_meeting\\_1&billNumber=hb0577](https://mgaleg.maryland.gov/mgaweb/Committees/Media/false?cmte=ecm&ys=2025RS&clip=ECM_2_12_2025_meeting_1&billNumber=hb0577)).

- Recommendations on how to ensure citations related to miscellaneous State business license enforcement are only issued to the business owner, operator, or responsible party; and
- Recommendations on how FEB can effectively issue citations related to miscellaneous State business license enforcement when the business owner does not reside in the State.

On June 16, 2025, the Comptroller’s Government Affairs team hosted the first meeting of the Business Licensing Reform Workgroup (the “Workgroup”). The Maryland Retailers Alliance (“MRA”), which participated in the meeting as a stakeholder, asserted that citations issued by FEB should be served on a resident agent or registered agent of a corporation, rather than on an employee of the corporation at the place of business. *See* Email from C. Locklear to E. Twigg (June 20, 2025, 9:00 AM) (hereinafter “June 20 Email”). In support of its view, MRA cited § 4-203 of the Criminal Procedure Article (“Crim. Proc.”). The relevant portions of § 4-203 that MRA highlighted read as follows:

- (b) If a charging document is filed against a corporation or limited liability company, the clerk of court may issue a summons to the corporation or limited liability company in its corporate or company name to appear at the court to answer the charging document.
- (c) A summons served under subsection (b) of this section may be served in the same manner as provided for service of process in a civil suit under the Maryland Rules.

Based on this statute, MRA takes the position that “Maryland Criminal Procedure § 4-203 already outlines the proper process for issuing charging documents to a business entity[.]” citing the above text in support of that proposition. *See* June 20 Email.

## **SUMMARY OF THE LAW**

### **Citation vs. Summons**

As an initial matter, a business’s failure to obtain a business license raises two issues for FEB and the Comptroller: (1) the issuance of a citation itself, and (2) the service of a summons. The statutory provisions cited by MRA address the latter, not the former. A citation is “a written charging document that a police officer or fire marshal issues to a defendant, alleging the defendant has committed a crime.” Crim. Proc. § 4-101(a)(2)(i). Authorized employees of FEB are “police officers.” *Id.* § 4-101(a)(4); § 2-101(c)(13). The Comptroller’s chief license inspector and assistant license inspectors are authorized to “begin proceedings to prosecute each person who: (1) is required to get a license from a clerk under this title; but (2) fails to get the license or pay as adequate license fee.” Bus. Reg. § 17-2104. FEB “begin[s] proceedings” by issuing a citation. Issuance of a citation (as opposed to an indictment, information, or statement of charges) is appropriate for certain misdemeanors, including those “not involving serious injury or an immediate health risk for which the maximum penalty of imprisonment is 90 days or less[.]” Crim. Proc. § 4-101(c)(1)(i)(2). These misdemeanors include violations of Subtitle 21 of Title 17 of the Business Regulations Article, and so FEB’s current practice of issuing citations is proper and

authorized by law. Additionally, because the violations are categorized as misdemeanors, and not mere civil infractions, “criminal citations” (as opposed to “civil citations”) are appropriate.

Section 4-203 of the Criminal Procedure Article is silent on the method for issuing a citation to a corporation or other business entity. The statute merely provides that after FEB files a charging document against a business entity in court, the court then sends a summons to the business entity to answer the charging document. *Id.* § 4-203(b). Service of the summons may be accomplished “in the same manner as provided for service of process in a civil suit under the Maryland Rules.”<sup>2</sup> Crim. Proc. § 4-203(c). Although the Rules vary based on the type of business entity, generally, a summons may be served on an entity’s resident agent. The procedures for serving a *summons* are distinct from the procedures for issuing and serving a *citation*.

For citations, the Maryland Rules require that “[t]he person issuing a citation, other than for a parking violation,” must “serve it upon the defendant *at the time of its issuance*.” Md. Rule 4-212(h) (emphasis added). The requirement that issuance and service occur simultaneously eliminates the possibility that service can be made by mail because issuance would precede service if FEB first issued a citation and then later mailed it. Also, the officer issuing the citation must be satisfied with the person’s identity and believe that he or she will comply with the citation. Crim. Proc. § 4-101(c)(2). Because the officer must assess these considerations in person, the requirement provides a second reason that mail service is not permitted for a citation. A citation also obviates the need for a court to issue a summons. *See* Md. Rule 4-212(b).

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<sup>2</sup> Maryland Rule 2-124, quoted below, outlines how corporations and other business entities may be served in matters originating in circuit court. Maryland Rule 3-124 includes identical provisions for matters originating in district court.

**(d) Corporation.** Service is made upon a corporation, incorporated association, or joint stock company by serving its resident agent, president, secretary, or treasurer. If the corporation, incorporated association, or joint stock company has no resident agent or if a good faith attempt to serve the resident agent, president, secretary, or treasurer has failed, service may be made by serving the manager, any director, vice president, assistant secretary, assistant treasurer, or other person expressly or impliedly authorized to receive service of process.

**(e) General Partnership.** Service made upon a general partnership sued in its group name in an action pursuant to Code, Courts Article, § 6-406 by serving any general partner.

**(f) Limited Partnership.** Service is made upon a limited partnership by serving its resident agent. If the limited partnership has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any general partner or other person expressly or impliedly authorized to receive service of process.

**(g) Limited Liability Partnership.** Service is made upon a limited liability partnership by serving its resident agent. If the limited liability partnership has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any other person expressly or impliedly authorized to receive service of process.

**(h) Limited Liability Company.** Service is made upon a limited liability company by serving its resident agent. If the limited liability company has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any member or other person expressly or impliedly authorized to receive service of process.

**(i) Unincorporated Association.** Service is made upon an unincorporated association sued in its group name pursuant to Code, Courts Article, § 6-406 by serving any officer or member of its governing board. If there are no officers or if the association has no governing board, service may be made upon any member of the association.

The inability to issue a citation by mail was the subject of Delegate Charkoudian's questions directed to the representative of MRA during the February 12, 2025, Economic Matters Committee hearing on HB 577.<sup>3</sup> Delegate Charkoudian identified the potential problem as being that a business's resident agent does not need to be resident of Maryland, so there is no way for FEB to issue a citation *in person* to some noncompliant businesses: "for the citation to be issued, it has to be issued *in person* to somebody who is physically in the State. That is, I think, the problem, because [FEB does not] have jurisdiction to go find the resident agent in Florida." (emphasis added).

To date, the General Assembly has allowed enforcement authorities to issue only certain types of civil citations by mail, but not any criminal citations. *E.g.*, Transp. §§ 21-707.1; 21-809; 21-1134 (civil traffic violations); Crim. L. § 10-112 (if citation not issued by police officer at time of littering violation, citation setting forth civil penalty may be mailed); Loc. Gov't § 13-704 (allowing citation by mail for violation of local erosion and sediment control ordinance). Because the licensing laws enforced by FEB carry criminal penalties, and not civil penalties, and because they do not expressly allow citations to be issued by mail, issuing a citation by mail is not permitted.

### **Citations to Non-Officer Employees**

In addition to an individual or partners in a partnership who operate a business, personal liability extends to an "agent" or "officer of a corporation" "*who actually engaged* in the unlicensed business." Bus. Reg. § 17-2106(b).

Although the term "agent" is defined in various articles of the Annotated Code of Maryland, the definition is often confined to a particular title or subtitle. For example, in Title 17, subtitle 10, dealing with "Junk Dealers and Scrap Metal Processors," "agent" is defined as a person who buys or sells junk or scrap metal for a junk dealer or scrap metal processor. *Id.* § 17-1001(b). That definition is, however, limited to subtitle 10. Title 17, Subtitle 21, "General Prohibited Acts; Penalties," the title under which FEB is authorized to issue a citation, does not define the term "agent." Nor frankly would that definition offer much help in this instance. In the absence of a statutory definition, the General Assembly likely intended that the word "agent" carry its common law meaning.

An agency relationship is fiduciary in nature, and its creation turns on the parties' intentions as manifested by their agreements or actions. . . . This Court has previously identified two fundamental elements for the creation of an agency relationship. . . . First, there must be some manifestation or indication by the principal to the agent that he or she consents to the agent's acting for his or her benefit. . . . Second, there must be consent by the agent to act for the principal. . . . Ultimately, the reviewing court must determine whether the parties intended to enter into an agency relationship. . . .

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<sup>3</sup> Available at [https://mgaleg.maryland.gov/mgawebsite/Committees/Media/false?cmte=ecm&ys=2025RS&clip=ECM\\_2\\_12\\_2025\\_meeting\\_1&billNumber=hb0577](https://mgaleg.maryland.gov/mgawebsite/Committees/Media/false?cmte=ecm&ys=2025RS&clip=ECM_2_12_2025_meeting_1&billNumber=hb0577). The line of questioning begins at 32:25.

Even though the creation of an agency relationship requires consent from both the principal and the agent, the relationship may be created expressly or implicitly. . . . Absent a written agreement, courts consider the following three factors, derived from the Restatement (Second) of Agency (“Restatement”), to determine if an agency relationship exists: (1) the agent's power to alter the legal relations of the principal; (2) the agent's duty to act primarily for the benefit of the principal; and (3) the principal's right to control the agent. . . . These three factors are neither exclusive nor conclusive considerations in determining whether an agency relationship exists, and they should be viewed “within the context of the entire circumstances of the transaction or relations.” . . . When a party asserts an agency relationship through inference, that party bears the burden of proving the existence of the agency relationship, including its nature and extent.

*Broadway Servs., Inc. v. Comptroller of Maryland*, 478 Md. 200, 216 (2022) (quotation marks, citations, and brackets omitted). Importantly, “all employers are principals, and *all employees are agents*[.]” *Id.* at 225 (emphasis added) (citing *Green v. H&R Block, Inc.*, 355 Md. 488, 510 (1999)).

Section 17-2106 does not indicate the extent of agency required for an “agent” to be individually responsible for operating a business without a license. Store managers likely have actual or implied authority to enter a contract to purchase goods to stock the shelves; their duty as employees is to act primarily for the benefit of the business; and the business has the right to control their activities. But absent an express authorization, they may not have authority to act on behalf of the business to obtain a business license. The use of the word “agent” in this section does not specify the level of agency that would expose an employee to criminal liability. As described above, some members of the community believe that imposing criminal responsibility on a store manager who orders goods for resale for a corporation’s failure to comply with the business licensing requirements raises serious fairness concerns.<sup>4</sup> However, such concerns are policy concerns, which is the Legislature’s domain, and in and of themselves do not render FEB’s current procedure improper or illegal.

### **Criminal vs. Civil Citations**

“[W]hether a sanction is civil or criminal is basically a matter of legislative intent and the nature of the statutory scheme or effect.” *Long v. American Legion Potomac Post 202, Inc.*, 117 Md. App. 18, 25 (1997) (holding that express criminal provision in tip jar licensing statute did not preclude local gaming commission from imposing civil penalties permitted in separate provision). The State “may impose both a criminal and civil sanction in respect to the same act or omission.” *Id.* at 28-29 (internal citation omitted). The General Assembly has established concurrent criminal and civil

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<sup>4</sup> Despite these concerns, imposing criminal responsibility on a store manager is not, in every instance, unconscionable. For example, suppose FEB appeared at a place of business and informed the manager on duty that the business was operating without a trader’s license and instructed the manager to cease operations until the licensing issue was resolved, or else risk criminal prosecution. If FEB appeared the next day and found the same manager has continued to make sales in contravention of FEB’s warning, the concerns about fairness might be negated. It is my understanding that FEB typically makes every effort to warn noncompliant businesses prior to issuing criminal citations.

penalties for violations of various laws, including the Consumer Protection Act (“CPA”) and the Maryland Home Improvement Law. *Id.* at 29; *see also Garrity v. Md. State Bd. of Plumbing*, 447 Md. 359, 387-90 (2016) (holding that CPA civil penalties do not constitute criminal penalties).

As to the licensing laws enforced by FEB, the General Assembly’s intent is clear. Operating without a license is a misdemeanor, not a civil violation. Bus. Reg. § 17-2106. Unlike other provisions throughout the Business Regulation Article, which expressly allow for civil penalties for certain violations, no provision allows FEB to issue a civil citation to a business operating without a license. *See, e.g.*, Bus. Reg. §§ 8-620 (civil penalties for violations of Title 8) and 8-623 (criminal penalties for same); § 5-905 (allowing Office of Cemetery Oversight to refer violations of Title 5, Subtitle 9 to the Attorney General for civil enforcement or to the State’s Attorney for criminal prosecution); § 4.5-501 (criminal penalties for impersonating a registrant or registered sales representative) and § 4.5-502 (civil penalties for same).

### **Statement of Charges as Alternative to Citation**

If the Comptroller desires to pursue a mail service solution without seeking legislation, she may consider initiating the prosecution by statement of charges. Currently, the statute requires the Comptroller to begin proceedings to prosecute a violation, Bus. Reg. § 17-2104, though it is silent as to the method. In Maryland, a defendant can be charged with a criminal offense by the issuance of a charging document, which includes “a citation, an indictment, an information, a statement of charges, and a warrant.” Crim. Proc. § 1-101(c)(2). A peace officer can file a written application that contains a sworn affidavit of probable cause that the defendant has committed the offense charged with a judicial officer who will issue the charging document. Md. Rule 4-211(b)(1). The statement of charges can be served on the defendant by mail or personal service by the sheriff or other peace officer, along with a summons to appear in court, by the judicial officer. Md. Rule 4-212(b). This option would allow FEB to name the business entity itself as the defendant, in addition to any particular officer or employee. Bus. Reg. § 17-2104 (allowing prosecution of a “person”); § 1-101(g) (defining person to include business entities); *see also 3011 Corp., Inc. v. District Ct. of Md.*, 327 Md. 463 (1992) (discussing procedural rights of corporate criminal defendants).

Initiating proceedings by a statement of charges may be viewed as administratively more burdensome than issuing a citation. After issuing and serving a citation to an individual, the officer need only file the original of the citation in the District Court. Md. Rule 4-211(a). A statement of charges, on the other hand, must be supported by an affidavit of probable cause submitted to a judge or commissioner, who then must file the statement of charges. *Id.* 4-211(b)(1). After the judicial officer files the statement of charges, the court causes a summons to be served on the defendant. *Id.* 4-212(b). Unlike a citation, the receipt of which is guaranteed because an officer issues it in person, initiating proceedings by a statement of charges carries a risk that the summons will be lost or misdirected in the mail, or name the incorrect agent or corporate officer. However, despite the differences in how proceedings are initiated by citation or statement of charges, the post-initiation prosecution of cases proceeds in the same manner, with the State’s Attorney retaining discretion on whether to pursue the case.

## **CONCLUSION**

FEB's current practice of issuing citations to employees of noncompliant businesses is permitted under the law. FEB properly pursues these cases as criminal matters, not civil matters. In light of concerns about fairness, FEB can instead initiate proceedings against these businesses or their owners or officers by filing statements of charges, which, unlike citations, do not need to be issued in person.