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Written Testimony

To: Maryland House Economic Matters Committee
From: Ronald A. Ward Jr., Esq.
Date: February 6, 2020
Re: Opposition to Maryland House Bill 3

I. Introduction

My name is Ronald Ward and I am a life-long resident of Maryland. I have been an electronic cigarette or "e-cigarette" user for over 10 years, a smoke free alternatives activist for over 9 years and have owned an electronic cigarette store in Baltimore County, MD for the past 6 years.

House Bill 3, as written, shows a lack of knowledge of the products it intends to regulate, namely Electronic Smoking Devices (hereinafter "ESDs") and contains a highly subjective, overly broad definition of "Flavored Tobacco Product." For these reasons, HB 3 will enact a vague product standard that will complicate compliance for retailers and might be ripe for abuse by enforcement officers. I respectfully urge this Committee to issue an unfavorable report for House Bill 3.

II. Proposed Legislation

The definition of "Flavored Tobacco Product," on Page 2, lines 13 to 20, and elsewhere in the bill, would constitute a prohibition of ALL flavored ESD liquid, including tobacco flavors. Much like leaf tobacco products that include flavorings other than tobacco, ESD tobacco flavors rely on many of the flavorings listed in the bill to approximate a tobacco-like flavor. But rather than prohibiting sales of products with a "characterizing" flavor other than tobacco, HB 3 makes the litmus test for a violating product merely the detection of a flavor other than tobacco. Note that no ESD liquid product currently on the market can claim a one-to-one flavor experience with combustible tobacco.

House Bill 3 demonstrates a fundamental misunderstanding of the product it wishes to regulate. ESD products do not rely on combustion of leaf tobacco to work. Instead, a liquid

solution is aerosolized by a heating element which makes the flavor experience remarkably different from that of inhaling the products of combustion. To the untrained nose or palette, a tobacco flavored ESD liquid might taste like several different things other than tobacco. While many people who vape report that tobacco flavored ESD liquids can act as relapse triggers, people who do not smoke or vape may not recognize a tobacco flavored ESD product by smell or taste alone. Considering that either one of these senses can be used to determine that an ESD liquid is a flavor other than tobacco, it is possible that enforcement will be inconsistent and, in the worst cases, predatory.

This legislation lacks direction to enforcement officers regarding use of objective testing protocols to determine if an ESD product is compliant with the flavors prohibition. Smell, taste, or marketing materials observed in isolation are not substantive, objective tests needed to make an accurate determination. It is not reasonable to assume that an "ordinary consumer" possesses the skills to identify the differences between a tobacco flavored ESD liquids and many non-tobacco flavored ESD liquids.

In addition to the obvious issues with enforcement, House Bill 3 would prohibit the sale of new tobacco products that the Food and Drug Administration (FDA) determines to meet the appropriate for the protection of public health standard. In fact, HB 3 would ban sales of leaf tobacco products offered in mint and wintergreen for which the FDA has granted modified risk orders that allow a manufacturer to market its tobacco products as lower risk compared to smoking. Rather than claim this regulatory authority, the legislature would better serve its citizens by deferring to the more deliberative FDA in this matter.

III. Importance of legitimate access to flavors for adult ESD users

Flavors are the reason why ESD liquids work to help adult smokers switch from the use of traditional cigarettes. Most vapers find tobacco flavors unappealing, specialized Vape Shops like my business rely heavily on the sale of flavored ESD liquid and, if Maryland consumers are unable to purchase flavored ESD liquid from reputable, licensed retail establishments, they will inevitably turn to the black market or attempt to manufacture their own liquid by buying the components online. This would only worsen the situation in that it would allow for more youth access and may create even more ESD liquid safety concerns.

But, if this committee intends to move forward with a favorable report for House Bill 3, I urge you to amend the bill to include an exemption for adult-only specialty tobacco and vapor retailers. Vape shops, such as mine, act as the true "gatekeepers" against youth use. The proof is in the numbers. According to the FDA Compliance Check Inspection of Tobacco Product Retailers (through November 30, 2019), out of 222 violations, not a single vape shop was cited for selling vapor products to underage consumers. Vape shops only sell ESD products and provide expert instruction and technical support to people who are transitioning off of cigarettes. Due to these facts, vape shop owners take youth usage very seriously and are acting as a vital

part of the solution. We must also consider whether the Recent Tobacco 21 laws are effective before we take these drastic measures that basically constitute prohibition.

It is also relevant that this Committee has contemplated banning the indoor use of ESDs since 2010 and has declined to issue any favorable reports. Now, in the current climate, this Committee is contemplating whether to destroy the entire industry. That is quite a leap.

V. Conclusion

I recommend that the House Economic Matters Committee issue an unfavorable report for House Bill 3. In the alternative, I request that the State allow an exemption for licensed vape shops in Maryland that are only accessible to adults over the age of 21. Thank you for considering my comments and please contact me with any questions or concerns. I will contact your staff to bring your attention to my written testimony and express my desire to discuss this issue more at length.