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Written Testimony

To: Maryland House Economic Matters Committee
From: Ronald A. Ward Jr.
Date: March 5, 2024
Re: Opposition to Maryland House Bill 1197

I. Introduction

My name is Ronald Ward and I am a life-long resident of Maryland. I have been an Electronic Smoking Device (hereinafter "ESD") user for over 14 years, an ESDs advocate for over 12 years and have owned an ESD store (vape shop) in Baltimore County, MD for the past 10 years.

This Bill would devastate Maryland Vape Shop businesses, eliminate nearly all ESDs from the legitimate market, create an ESD black market (in addition to the existing online black market) and force former smokers back to the deadly habit of smoking. It would also bolster the sales of cigarettes and other combustible tobacco that is almost primarily sold in convenience stores. These convenience stores make minimal income from and sell a very limited variety of ESDs while most of their tobacco profits result from the sale of combustible tobacco products. That is the reason why convenience stores and big tobacco companies are in favor of this Bill. Actually, the big tobacco companies are shopping this legislation in most of the country. This is nothing more than an attempt to destroy the existing ESD industry in Maryland in favor of a handful of big tobacco ESD products. Keep in mind that big tobacco companies derive a very small percentage of their profits from the sale of ESDs. Furthermore, the big tobacco companies have already admitted that ESDs are significantly cutting into their cigarette profits. Therefore, the utter elimination of ESDs would benefit their deadly cigarette businesses.

II. Overview of House Bill 1197

HB 1197 proposes an effective prohibition on virtually all vaping products currently on the market. It is the product of big tobacco companies looking to crush the ESD market, sell more cigarettes and make ESD products unappealing. This Committee will basically hand over the ESD industry in Maryland to big tobacco companies and organized crime if this Bill becomes Law.

As to its substantive issues, in Section 16.7-302, this Bill sets forth a regulatory and fiscal framework that is completely insurmountable not only for ESD businesses in Maryland but also for the State itself. For the sake of brevity, I am available for an in-depth discussion of the language referred to in the previous statement.

The Bill demonstrates a fundamental misunderstanding of the very industry and its consumers that it seeks to regulate.

This fact is clearly illustrated in the last 4 lines of Section 16.7-306 which read:

“The penalties in paragraph (1) of this subsection (which, BTW is a misdemeanor criminal charge) do not apply to a person who possesses less than \$100 worth of Electronic Smoking Devices solely for personal consumption and not for a resale to a consumer”. I have vaped for 14 years and regularly carry well more than one hundred dollars (\$100.00) worth of ESDs solely for personal consumption. Incidentally, as I draft this Bill, I am vaping an ESD that, with all its components plus liquid total approximately, two hundred dollars (\$200.00) not including tax. I also always carry a backup which, depending upon the device and additional liquid, usually total the same price. Also, how does an enforcement officer know the retail price of an ESD?

The bottom line is that HB 1197 will eliminate over 95% of nicotine vaping products available at Maryland specialty retailers. This will disproportionately benefit large tobacco companies by decimating their competition. It is also confusing that this Bill contains the same language as HB 987 and SB 1033.

III. Incomplete, Arbitrary and Caprecious FDA PMTA Process and Lawsuits

The FDA PMTA process has been fraught with problems since its inception. Its disorganized, expensive and completely unfair handling of this process is inexcusable. Also, it is a process that, at this time, is far from complete. Furthermore, the FDA has arbitrarily denied marketing orders for nearly 1 million products and is failing to move forward with authorizing hundreds of thousands of other products.

The process is so flawed that a United States Court of Appeals recently ruled that the process, for many reasons, is “arbitrary and capricious”. Therefore, they remanded to the FDA in order for the agency to correct these serious problems with the PMTA process. There are also hundreds of thousands of applications that have not been reviewed. Of course, many companies have filed suit against the FDA and there are more to come in the future. Therefore, this proposed legislation is not ripe and this Committee should issue an unfavorable report for HB 1197.

IV. Consequences for Public Health and Consumer Choice

There is a reason why Altria—America’s largest cigarette company—is such a fervent advocate for registries or “certification”, as it is named in this Bill. Last October, they blamed ESDs for causing their cigarette sales to decline faster than anticipated. Altria's advocacy

suggests a strategic interest in making quality vaping products less accessible, potentially driving adults back to smoking cigarettes.

V. No State Has Successfully Implemented a PMTA Registry

To date, no state has successfully implemented a PMTA registry. Legal challenges and enforcement difficulties have plagued these efforts, underscoring the impracticality and inefficacy of such regulations. For instance, a county judge put enforcement of Louisiana's PMTA registry on hold last month.

Prior to the Louisiana law being enjoined, I learned of disturbing reports of vaping products being sold out of car trunks in the parking lots of tobacco shops. That is in addition to the easy availability of these products through social media channels like TikTok and Snapchat. Furthermore, ESDs are readily available to consumers online despite a Federal law (the PACT Act), which prohibits the shipping of ESDs from retailer to consumers in the United States. Instead of focusing their attention on law-abiding, tax-paying legitimate businesses, maybe the drafters should focus on the bad actors?

VI. Youth Vaping Has Plummeted as Adult Use Has Grown

Contrary to the narrative of a vaping epidemic, the rate of youth vaping has plummeted by 60% since 2019, while usage of ESDs by adults has surged by over 25%. This growth is predominantly attributed to adults opting for ESDs, suggesting a significant shift from smoking to vaping.

VII. Conclusion

Thank you for considering my testimony. For the reason set forth above, I recommend that the House Economic Matters Committee issue an unfavorable report for House Bill 1197. As stated previously, this Bill would absolutely destroy the mom-and-pop ESD businesses in favor of big tobacco companies, lone criminals, organized crime and illicit online sales. It would certainly force me to close the doors of my legitimate, law-abiding business that I worked a decade to build. If this Committee has any inquiries or requests for supporting documentation, please feel free to contact me and I will promptly provide said documents. I am also open to a verbal dialogue with any member of this Committee regarding HB 1197.

