

ANTHONY G. BROWN
Attorney General



CANDACE MCLAREN LANHAM
Chief of Staff

CAROLYN A. QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

EMAIL
amaccormack@oag.state.md.us

WRITER'S DIRECT DIAL NO.
(410) 576-7052

March 6, 2023

TO: The Honorable Pamela Beidle
Chair, Finance Committee

FROM: Anna MacCormack
Assistant Attorney General, Office of the Attorney General

RE: Senate Bill 987 – Business Regulation – Electronic Smoking Devices
Manufacturers – Certifications

The Office of Attorney General urges this Committee to report favorably on Senate Bill 987 – Business Regulation – Electronic Smoking Devices Manufactures – Certifications.

Senate Bill 987 brings much-needed improvements to Maryland's electronic smoking devices ("ESDs") law, Business Regulation Title 16.7. There have been many changes since Title 16.7 was enacted in 2017, including significant growth in the market and a changed federal landscape. Senate Bill 987 incorporates improvements recommended by the Comptroller's 2020 Task Force on Electronic Smoking Devices to Maryland's ESD market and strengthens the licensing and regulatory systems for ESDs in the State.

ESD use has grown, including youth ESD use, and products have flooded the market. From January 2020 to December 2022, total U.S. e-cigarette unit sales increased by 46.6%, from 15.5 million to 22.7 million units.¹ ESDs are the second largest nicotine product category after traditional combustible cigarettes for adult users, but for youth, ESD use is higher than cigarettes: the 2021 Maryland High School Survey reports that while 3.6% of high school students smoked

¹ CDC, F.R. Ali et al. "E-cigarette Unit Sales by Product and Flavor Type, and Top-Selling Brands, United States, 2020–2022," *Morbidity & Mortality Weekly Report*, vol. 72 no. 25, 672–77 (June 23, 2023), <https://www.cdc.gov/mmwr/volumes/72/wr/pdfs/mm7225a1-H.pdf>.

This bill letter is a statement of the Office of Attorney General's policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us.

cigarettes, 14.7% of high school students currently used ESDs—the equivalent of more than 4 students in a class of 30.² A 2022 national survey of students found that of the 2.55 million U.S. middle and high school students currently using e-cigarettes, most reported using flavored products, and, among those students, approximately 7 of 10 used fruit flavors.³ Nicotine is highly addictive and can harm developing brains. Early nicotine exposure can prime the brain for addiction to other drugs, and nearly 90% of adults who smoke daily started smoking by age 18, and 98% by age 25.

As sales and use have risen, changes have also come to the legal landscape. In 2016, pursuant to the Family Smoking Prevention and Tobacco Control Act, 21 U.S.C. § 387 *et seq.* (“Tobacco Control Act”), the FDA adopted the “Deeming Rule,” which provided that ESDs would be treated as “tobacco products.” This meant that ESDs were subject to the Tobacco Control Act and regulated by FDA. Products that were on the market as of August 8, 2016, could remain on the market provided the manufacturer submitted a premarket tobacco product application to the FDA by September 9, 2020. In other words, to legally market a new tobacco product—which includes ESDs—a company must apply for and receive a written marketing order from FDA.

The window for ESD manufacturers to apply for a marketing order has now closed and the FDA has taken action on most of the approximately 26 million premarket tobacco product applications it received. Millions of products received denials, refuse to accept, or refuse to file letters from the FDA. An unknown number of ESDs still have pending premarket applications, and the FDA has now issued marketing orders for 23 tobacco-flavored e-cigarette and vapor products. This process has finally given such much-needed clarity regarding what ESDs are authorized for sale by federal law.

Senate Bill 987 would improve Maryland’s ESD industry in two main ways. First, Senate Bill 987 would bring the ESDs sold in Maryland into compliance with federal and state law. It does this by establishing an ESD directory, similar to the cigarette directory that Maryland has had for twenty years. To comply with federal and existing state law,⁴ Senate Bill 987’s directory would include ESDs that are legal for sale because they have received FDA marketing orders. This would protect Maryland teens and other consumers from ESDs made by unknown manufacturers with unregulated and potentially dangerous product components.

² Maryland Dep’t of Health, *Youth Risk Behavior Survey/Youth Tobacco Survey (YRBS/YTS) 2021-2022*, <https://health.maryland.gov/phpa/ccdpc/Reports/Pages/State-Level-Data,-2021-2022.aspx>.

³ CDC, M. Cooper et al., “Notes from the Field: E-cigarette Use Among Middle and High School Students—United States, 2022,” *Morbidity & Mortality Weekly Report*, vol. 71 no. 40, 1283–85 (Oct. 7, 2022), <https://www.cdc.gov/mmwr/volumes/71/wr/pdfs/mm7140a3-H.pdf>.

⁴ Md. Code. Bus. Reg. § 16.7-207(a)(5) (“Subject to the hearing provisions of § 16.7-208 of this subtitle, the Executive Director may deny a license to an applicant, reprimand a licensee, or suspend or revoke a license if the applicant or licensee...violates federal, State, or local law regarding the sale of electronic smoking devices....”).

In addition, by establishing a directory of legal products, Senate Bill 987 will enable law-abiding State licensees to avoid selling illegal and dangerous products unknowingly. Senate Bill 987 empowers the Office of the Attorney General, which would administer the ESD directory—as it currently does for the cigarette directory—to obtain information about the companies and their products before allowing ESDs to enter Maryland. Furthermore, applicants to the directory must either register to do business in the State or appoint an agent for service of process, enabling the State to find these manufacturers if there are any violations of the law.

An ESD directory is a commonsense solution to a market that has been flooded with noncompliant, illegal products, including disposable products and synthetic nicotine products. The Associated Press reports that according to sales data, the number of different ESDs sold in the United States since 2020 has tripled to more than 9,000, “driven almost entirely by a wave of unauthorized disposable vapes from China.”⁵ With so many products entering and exiting the market, it is difficult for wholesalers, retailers, and vape shop vendors to know what ESDs are legal for sale, resulting in many illicit products remaining available to consumers.

Additionally, Senate Bill 987 grants the Alcohol, Tobacco, and Cannabis Commission (“ATCC”) authority to conduct unannounced inspections of retailers and vape shop vendors to ensure compliance with the Title and the requirement that ESDs may only be sold to individuals age 21 and older. The ATCC already conducts retail checks for cigarettes and Other Tobacco Products (“OTP”), including directory checks for those products. Giving the Commission similar authority to check ESD compliance is another way in which Senate Bill 987 seeks to treat ESDs similarly to traditional tobacco products.

The second way in which Senate Bill 987 improves Maryland’s ESD industry is by making important modifications to Maryland’s ESD licensure system. Right now, many entities selling ESDs do not have ESD licenses because they already have cigarette or OTP licenses, and the law exempts them from getting a separate ESD license. Senate Bill 987 requires that all businesses obtain a separate ESD license, enabling the State to know what businesses are buying and selling ESDs in Maryland. Senate Bill 987 also requires that all sales be made by and to businesses with Maryland ESD licenses, as is required for traditional tobacco products.

Senate Bill 987 would also close a significant loophole in the current law that allows ESD manufacturers to sell their products over the internet or by mail directly to consumers. Online sales are not allowed for cigarettes or OTP, and Senate Bill 987 removes this exception for ESDs so that ESDs are treated the same as cigarettes and OTP. Senate Bill 987 requires that all purchases by consumers be face-to-face sales, which are better able to prevent illegal, underage sales.

⁵ M. Perrone, “Thousands of unauthorized vapes are pouring into the US despite the FDA crackdown on fruity flavors,” *Associated Press* (June 26, 2023), <https://apnews.com/article/fda-vapes-vaping-elf-bar-juul-80b2680a874d89b8d651c5e909e39e8f>.

The provisions in Senate Bill 987 come from the State’s long experience with traditional tobacco products, as well as the recommendations of the Comptroller’s Task Force on Electronic Smoking Devices.⁶ The Task Force, which was established in 2019, was made up of 40 appointed members from every region of the State, comprised of educators, ESD retailers, public health experts, concerned parents, and local and state elected officials. After holding four public meetings and soliciting feedback from both industry and the public, the Task Force’s 2020 Report made two recommendations found in Senate Bill 987: banning all direct-to-consumer internet and mail order sales of ESDs and requiring separate ESD licenses with higher fees. The Report also recommended obtaining more information from manufacturers to better “know precisely what e-liquids and ESD devices contain before these products ever reach consumers.” Senate Bill 987 improves that by requiring that ESDs sold in the State have marketing orders issued by the FDA.

Finally, the proposed amendments⁷ would make additional improvements to Maryland’s ESD laws. These amendments would expand the ESDs permitted for sale in Maryland to include those that have timely applied for FDA authorization and are awaiting a ruling or that have a court order staying a final decision on the directory. Only licensed vape shops would be permitted to sell this larger group of ESDs with pending applications, keeping them out of convenience stores and restricting them to stores that cater to individuals over the age of 21.

The amendments would also establish a two-tiered fee system for Maryland’s ESD directory: manufacturers applying for ESDs with marketing orders will have a fee of \$1,000 per product, while ESDs with pending FDA applications will have a fee of \$5,000 per product, paid to the Attorney General to be used for administration and enforcement of this law. Similarly, a new subsection is included requiring that manufacturers post funds into an escrow account, the amount of which depends on what products they are certifying. These funds would be available to the ATCC for the costs of collection and disposing of any ESDs removed from the directory or which violate federal, state, or local law.

The amendments would also revise the penalties section, providing the State with tools to effectively enforce the Directory. Sales of off-directory products would also be deemed an unfair and deceptive trade practice in violation of the Consumer Protection Act. Lastly, the amendments would provide additional process when a product is removed from the directory.

For the foregoing reasons, the Office of the Attorney General urges a favorable report on Senate Bill 987.

cc: Committee Members

⁶ Comptroller’s Task Force on Electronic Smoking Devices, *Electronic Smoking Devices in Maryland: A Safer Path Forward* (2020), <https://mdlaw.ptfs.com/awweb/pdfopener?md=1&did=31028>.

⁷ Attached are the proposed amendments for House Bill 1033, which is cross-filed with Senate Bill 987.



HB1033/433921/1

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
SERVICES

26 FEB 24
17:00:55

BY: Delegate Mireku-North
(To be offered in the Economic Matters Committee)

AMENDMENTS TO HOUSE BILL 1033
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 7, after “licensure” insert “and certain actions”; in line 13, after “manufacturers;” insert “requiring certain licensed electronic smoking devices manufacturers to place a certain amount of money into escrow in certain circumstances;”; in line 19, strike “through” and substitute a comma; in line 26, strike the second “and” and substitute a comma; and in the same line, after “16.7–201” insert “, and 16.7–203”.

On page 2, in line 3, strike “16.7–307” and substitute “16.7–308”.

AMENDMENT NO. 2

On page 5, in line 8, after “(b)” insert ““AUTHORIZED BY THE FDA” MEANS AN AUTHORIZATION GRANTED BY THE FDA UNDER 21 U.S.C. § 387J.

(c)”;

and in line 10, strike “(c)” and substitute:

“(D) “DIRECTORY” MEANS THE LIST PUBLISHED BY THE ATTORNEY GENERAL OF APPROVED ELECTRONIC SMOKING DEVICES MANUFACTURERS THAT HAVE SUBMITTED A CERTIFICATION IN ACCORDANCE WITH THIS TITLE AND THE BRAND FAMILIES AND BRAND STYLES OF THEIR ELECTRONIC SMOKING DEVICES THAT HAVE BEEN DETERMINED BY THE ATTORNEY GENERAL AS CONFORMING TO THE REQUIREMENTS OF § 16.7–302 OF THIS TITLE.

(E)”;

and in line 25, strike “(d)” and substitute “**(F)**”.

On page 6, in lines 11, 17, and 29, strike “(e)”, “(f)”, and “(g)”, respectively, and substitute “**(G)**”, “**(H)**”, and “**(I)**”, respectively.

On page 7, in lines 7, 20, 22, and 25, strike “(h)”, “(j)”, “(k)”, and “(l)”, respectively, and substitute “**(J)**”, “**(M)**”, “**(N)**”, and “**(O)**”, respectively; and in line 9, strike “(i)” and substitute “**(K)** **“FDA” MEANS THE FEDERAL FOOD AND DRUG ADMINISTRATION.**”

(L)”.

On page 10, in lines 4 and 5, strike “AND THE ATTORNEY GENERAL”; in lines 9 and 22, in each instance, after “devices” insert “**THAT ARE LISTED ON THE DIRECTORY**”; and in line 28, after “devices” insert “**THAT ARE LISTED ON THE DIRECTORY AND HAVE RECEIVED A FINAL MARKETING ORDER AUTHORIZED BY THE FDA**”.

On page 11, in line 12, after the first “devices” insert “**THAT ARE LISTED ON THE DIRECTORY**”; and in line 21, after “devices” insert “**THAT ARE LISTED ON THE DIRECTORY TO CONSUMERS**”.

On page 15, strike in their entirety lines 21 through 26, inclusive; in line 33, after “HAS” insert “:

(I)”;

in line 34, strike “U.S. FOOD AND DRUG ADMINISTRATION” and substitute “FDA”;
in line 35, after “STATES” insert “; OR”

(II) 1. MARKETED AN ELECTRONIC SMOKING DEVICE IN THE UNITED STATES AS OF AUGUST 8, 2016; AND

2. SUBMITTED A PREMARKET TOBACCO PRODUCT APPLICATION IN ACCORDANCE WITH 21 U.S.C. § 387J FOR AN ELECTRONIC SMOKING DEVICE BEFORE SEPTEMBER 9, 2020, AND THE APPLICATION REMAINS UNDER REVIEW BY THE FDA OR A FINAL DECISION ON THE APPLICATION IS NOT OTHERWISE IN EFFECT”.

On page 16, in lines 10 and 19, in each instance, strike “FAMILY” and substitute “FAMILIES OR BRAND STYLES”; in line 13, after “FAMILY” insert “OR BRAND STYLE”; in line 14, strike “ARE” and substitute “IS”; in line 17, strike “OR CURRENT FISCAL YEAR” and substitute “3 CALENDAR YEARS”; in line 19, strike “INCLUDES” and substitute “INCLUDE”; in the same line, strike “THE JUICE,” and substitute “VAPING LIQUID, NICOTINE”; in line 21, strike “MARKET” and substitute “MARKETING”; in line 23, after “INCLUDE” insert “:

(I)”;

in lines 23 and 24, strike “U.S. FOOD AND DRUG ADMINISTRATION” and substitute “FDA TO SELL ELECTRONIC SMOKING DEVICES IN THE UNITED STATES; OR”

(II) DOCUMENTS ISSUED BY THE FDA OR A COURT CONFIRMING THAT THE PREMARKET TOBACCO PRODUCT APPLICATION FILED IN ACCORDANCE WITH 21 U.S.C. § 387J WAS TIMELY SUBMITTED AND REMAINS PENDING OR OTHERWISE HAS NOT RESULTED IN A FINAL DECISION THAT IS IN EFFECT”;

(Over)

and in line 27, after “FAMILIES” insert “AND BRAND STYLES”.

On page 18, in line 4, after “ANY” insert “MATERIAL CHANGES TO ITS CERTIFICATION, INCLUDING A FINAL DETERMINATION BY THE FDA, A CHANGE IN MANUFACTURING FACILITY, OR ANY”; in line 6, after “FAMILIES” insert “OR BRAND STYLES”; after line 8, insert:

“(G) (1) FOR EACH CERTIFICATION SUBMITTED UNDER THIS SECTION, THE ELECTRONIC SMOKING DEVICES MANUFACTURER SHALL PAY TO THE ATTORNEY GENERAL:

(I) A FEE OF \$1,000 FOR EACH ELECTRONIC SMOKING DEVICE THAT HAS BEEN AUTHORIZED BY THE FDA; OR

(II) A FEE OF \$5,000 FOR EACH ELECTRONIC SMOKING DEVICE FOR WHICH THE MANUFACTURER SUBMITTED A PREMARKET TOBACCO PRODUCT APPLICATION BEFORE SEPTEMBER 9, 2020, AND THE APPLICATION EITHER REMAINS UNDER REVIEW BY THE FDA OR A FINAL DECISION ON THE APPLICATION IS OTHERWISE NOT IN EFFECT.

(2) THE REVENUES GENERATED UNDER THIS SECTION SHALL BE DISTRIBUTED TO A SPECIAL FUND TO BE USED BY THE OFFICE OF THE ATTORNEY GENERAL FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS TITLE.”;

and in line 16, after “CERTIFICATIONS” insert “SUBMITTED UNDER THIS SUBTITLE”.

On page 19, in line 7, strike “AN INDIVIDUAL” and substitute “EXCEPT AS PROVIDED IN § 16.7-306(A)(3) OF THIS SUBTITLE, A PERSON”.

On page 20, in line 23, after “WHOLESALE” insert “DISTRIBUTOR”.

On pages 21 through 23, strike in their entirety the lines beginning with line 28 on page 21 through line 4 on page 23, inclusive, and substitute:

“(A) PRIOR TO INCLUSION ON THE DIRECTORY, A LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER SHALL DEPOSIT AND MAINTAIN IN AN ESCROW FUND ESTABLISHED AT A FEDERALLY OR STATE-CHARTERED FINANCIAL INSTITUTION AND GOVERNED BY A QUALIFIED ESCROW AGREEMENT THAT HAS BEEN REVIEWED AND APPROVED BY THE ATTORNEY GENERAL, THE FOLLOWING AMOUNTS, AS APPROPRIATE:

(1) \$25,000 FOR A LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER THAT SUBMITS A CERTIFICATION UNDER THIS TITLE THAT INCLUDES ONLY ELECTRONIC SMOKING DEVICES THAT ARE AUTHORIZED BY THE FDA;

(2) \$75,000 FOR A LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER THAT SUBMITS A CERTIFICATION UNDER THIS TITLE THAT INCLUDES BOTH ELECTRONIC SMOKING DEVICES THAT ARE AUTHORIZED BY THE FDA AND ELECTRONIC SMOKING DEVICES FOR WHICH THE ELECTRONIC SMOKING DEVICES MANUFACTURER SUBMITTED A PREMARKET TOBACCO PRODUCT APPLICATION UNDER 21 U.S.C. § 387J BEFORE SEPTEMBER 9, 2020, AND THE APPLICATION EITHER REMAINS UNDER REVIEW BY THE FDA OR A FINAL DECISION ON THE APPLICATION IS NOT OTHERWISE IN EFFECT; AND

(3) \$150,000 FOR A LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER THAT SUBMITS A CERTIFICATION UNDER THIS TITLE THAT INCLUDES ONLY ELECTRONIC SMOKING DEVICES FOR WHICH THE MANUFACTURER SUBMITTED A PREMARKET TOBACCO PRODUCT APPLICATION

(Over)

UNDER 21 U.S.C. § 387J BEFORE SEPTEMBER 9, 2020, AND THE APPLICATION EITHER REMAINS UNDER REVIEW BY THE FDA OR A FINAL DECISION ON THE APPLICATION IS NOT OTHERWISE IN EFFECT.

(B) (1) IF A LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER THAT PLACES FUNDS INTO ESCROW UNDER SUBSECTION (A)(2) OF THIS SECTION CAN FULFILL THE REQUIREMENTS OF SUBSECTION (A)(1) OF THIS SECTION, THE ATTORNEY GENERAL MAY MODIFY THE REQUIRED ESCROW AMOUNT TO \$25,000.

(2) IF A LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER THAT PLACES FUNDS INTO ESCROW UNDER SUBSECTION (A)(3) OF THIS SECTION CAN FULFILL THE REQUIREMENTS OF SUBSECTION (A)(1) OR (2) OF THIS SECTION, THE ATTORNEY GENERAL MAY MODIFY THE REQUIRED ESCROW AMOUNT ACCORDINGLY.

(C) (1) A LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER THAT PLACES FUNDS INTO ESCROW IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION SHALL RECEIVE THE INTEREST OR OTHER APPRECIATION ON THE FUNDS AS EARNED.

(2) THE ATTORNEY GENERAL SHALL RELEASE THE FUNDS PLACED INTO ESCROW ONLY:

(I) TO THE EXECUTIVE DIRECTOR TO SATISFY ANY UNPAID COSTS ARISING OUT OF THE COLLECTION, SEIZURE, STORAGE, OR DISPOSAL OF ELECTRONIC SMOKING DEVICES, OR OF ANY OTHER ENFORCEMENT CAUSED BY A VIOLATION OF APPLICABLE FEDERAL, STATE, OR LOCAL LAW BY THE LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER; OR

(II) TO A LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER IF THE ELECTRONIC SMOKING DEVICES MANUFACTURER:

1. ELECTS TO STOP SELLING ELECTRONIC SMOKING DEVICES IN THE STATE;

2. DEMONSTRATES TO THE SATISFACTION OF THE ATTORNEY GENERAL THAT THE LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER HAS REMOVED ALL BRAND FAMILIES AND BRAND STYLES REPRESENTED BY THE LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER FROM THE STATE; AND

3. APPLIES TO THE ATTORNEY GENERAL FOR A RELEASE OF FUNDS IN ESCROW.

(D) (1) EACH LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER THAT PLACES FUNDS INTO ESCROW IN ACCORDANCE WITH THIS SECTION SHALL ANNUALLY CERTIFY TO THE ATTORNEY GENERAL THAT IT IS IN COMPLIANCE WITH THIS SECTION.

(2) IF THE ATTORNEY GENERAL NOTIFIES A LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER THAT THE AMOUNT IN ESCROW HAS FALLEN BELOW THE AMOUNT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION, THE LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER SHALL BRING THE AMOUNT IN ESCROW INTO COMPLIANCE WITHIN 15 DAYS AFTER NOTICE.

(3) (I) THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION ON BEHALF OF THE STATE AGAINST ANY LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER THAT FAILS TO PLACE INTO ESCROW THE FUNDS REQUIRED UNDER SUBSECTION (A) OF THIS SECTION.

(II) IF A COURT FINDS THAT A LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER KNOWINGLY VIOLATED SUBSECTION (A) OF THIS SECTION, THE COURT MAY IMPOSE A CIVIL PENALTY TO BE PAID TO THE GENERAL FUND OF THE STATE IN AN AMOUNT NOT TO EXCEED THE SUM OF:

1. 15% OF THE AMOUNT IMPROPERLY WITHHELD FROM ESCROW FOR EVERY DAY THE VIOLATION PERSISTS; AND

2. 300% OF THE INITIAL AMOUNT IMPROPERLY WITHHELD FROM ESCROW.

(4) IF A COURT FINDS THAT A LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER HAS KNOWINGLY VIOLATED SUBSECTION (A) OF THIS SECTION FOR A SECOND TIME, THE COURT MAY PROHIBIT THE LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER FROM SELLING ELECTRONIC SMOKING DEVICES TO CONSUMERS IN THE STATE FOR A PERIOD NOT TO EXCEED 2 YEARS.

(5) EACH FAILURE BY A LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER TO MAINTAIN THE AMOUNT IN ESCROW REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL CONSTITUTE A SEPARATE VIOLATION.”.

On page 23, after line 5, insert:

“(A) IN ADDITION TO OR INSTEAD OF ANY OTHER CIVIL OR CRIMINAL REMEDY PROVIDED BY LAW:

(1) SUBJECT TO THE PROVISIONS OF § 16.7–208 OF THIS TITLE, ON A DETERMINATION THAT A LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER, LICENSED ELECTRONIC SMOKING DEVICES WHOLESALER DISTRIBUTOR, LICENSED ELECTRONIC SMOKING DEVICES WHOLESALER IMPORTER, LICENSED ELECTRONIC SMOKING DEVICES RETAILER, OR LICENSED VAPE SHOP VENDOR HAS VIOLATED § 16.7–303(D) OF THIS SUBTITLE OR A LICENSED ELECTRONIC SMOKING DEVICES WHOLESALER DISTRIBUTOR HAS VIOLATED § 16.7–305(A) OF THIS SUBTITLE OR ANY REGULATION ADOPTED UNDER THIS TITLE, THE EXECUTIVE DIRECTOR MAY IMPOSE A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED THE GREATER OF:

(I) 500% OF THE RETAIL VALUE OF THE ELECTRONIC SMOKING DEVICES THAT ARE THE SUBJECT OF THE VIOLATION; OR

(II) \$5,000; AND

(2) ON A DETERMINATION THAT A LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER, LICENSED ELECTRONIC SMOKING DEVICES WHOLESALER DISTRIBUTOR, LICENSED ELECTRONIC SMOKING DEVICES WHOLESALER IMPORTER, LICENSED ELECTRONICS SMOKING DEVICES RETAILER, OR LICENSED VAPE SHOP VENDOR HAS COMMITTED A SUBSEQUENT VIOLATION OF § 16.7–303(D) OR § 16.7–305(A) OF THIS SUBTITLE OR ANY REGULATION ADOPTED UNDER THIS TITLE WITHIN 2 YEARS AFTER AN EARLIER VIOLATION, THE EXECUTIVE DIRECTOR MAY REVOKE OR SUSPEND THE LICENSE IN THE MANNER PROVIDED UNDER § 16.7–207 OR § 16.7–209 OF THIS TITLE.

(Over)

(B) EACH SALE AND EACH OFFER TO SELL ELECTRONIC SMOKING DEVICES IN VIOLATION OF § 16.7-303(D) OF THIS SUBTITLE SHALL CONSTITUTE A SEPARATE VIOLATION.

(C) IN ADDITION TO ANY PENALTIES OTHERWISE AVAILABLE, A VIOLATION OF § 16.7-303(D) OF THIS SUBTITLE SHALL BE CONSIDERED AN UNFAIR, ABUSIVE, OR DECEPTIVE TRADE PRACTICE AND SHALL BE SUBJECT TO THE PENALTY PROVISIONS UNDER TITLE 13 OF THE COMMERCIAL LAW ARTICLE.

(D) (1) ANY ELECTRONIC SMOKING DEVICES THAT HAVE BEEN SOLD, OFFERED FOR SALE, OR POSSESSED FOR SALE IN THE STATE OR IMPORTED INTO THE STATE FOR PERSONAL USE IN VIOLATION OF § 16.7-303(D) OF THIS SUBTITLE SHALL BE DEEMED CONTRABAND, SEIZED, AND FORFEITED IN ACCORDANCE WITH § 13-836, § 13-837, OR § 13-839 OF THE TAX - GENERAL ARTICLE.

(2) ELECTRONIC SMOKING DEVICES SEIZED AND FORFEITED UNDER THIS SUBSECTION MAY NOT BE RESOLD AND MAY BE DESTROYED.

(3) TO THE EXTENT THAT THE COSTS ARISING FROM ACTIONS TAKEN UNDER THIS SECTION ARE NOT SATISFIED BY THE AMOUNT IN ESCROW REQUIRED UNDER § 16.7-306 OF THIS SUBTITLE, ANY ADDITIONAL COSTS SHALL BE BORNE BY THE PERSON FROM WHOM THE CONTRABAND ELECTRONIC SMOKING DEVICES ARE SEIZED.

(E) THE ATTORNEY GENERAL, FOR ITSELF OR ON BEHALF OF THE EXECUTIVE DIRECTOR, MAY SEEK AN INJUNCTION TO RESTRAIN A THREATENED OR ACTUAL VIOLATION OF § 16.7-303(D) OR § 16.7-305(A) OF THIS SUBTITLE OR

ANY REGULATION ADOPTED UNDER THIS TITLE BY A LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER, LICENSED ELECTRONIC SMOKING DEVICES WHOLESALER DISTRIBUTOR, LICENSED ELECTRONIC SMOKING DEVICES WHOLESALER IMPORTER, LICENSED ELECTRONIC SMOKING DEVICES RETAILER, OR LICENSED VAPE SHOP VENDOR TO COMPEL THE SUBJECT OF THE INJUNCTION TO COMPLY WITH THE RELEVANT LAW.

(F) (1) THIS SUBSECTION DOES NOT APPLY TO A PERSON WHO POSSESSES LESS THAN \$100 WORTH OF ELECTRONIC SMOKING DEVICES SOLELY FOR THE PURPOSE OF PERSONAL CONSUMPTION.

(2) A PERSON WHO SELLS, DISTRIBUTES, ACQUIRES, HOLDS, OWNS, POSSESSES, TRANSPORTS, IMPORTS, OR CAUSES TO BE IMPORTED ELECTRONIC SMOKING DEVICES FOR RESALE TO A CONSUMER THAT THE PERSON KNOWS OR SHOULD HAVE KNOWN ARE INTENDED FOR DISTRIBUTION OR SALE IN THE STATE IN VIOLATION OF § 16.7-303(D) OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(I) A FINE NOT EXCEEDING \$5,000;

(II) IMPRISONMENT NOT EXCEEDING 1 YEAR; OR

(III) BOTH.

16.7-308.”.

On page 23, in line 6, after “(A)” insert “(1)”; and after line 10, insert:

“(2) IF A LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER RECEIVES A FINAL DECISION FROM THE FDA OR A COURT

(Over)

ORDER REGARDING A PREMARKET TOBACCO APPLICATION, THE LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER SHALL PROVIDE A COPY OF THE DECISION OR ORDER TO THE ATTORNEY GENERAL WITHIN 15 DAYS AFTER ISSUANCE.

(3) (I) THE ATTORNEY GENERAL MAY NOT REMOVE A BRAND FAMILY, A BRAND STYLE, OR AN ELECTRONIC SMOKING DEVICES MANUFACTURER FROM THE DIRECTORY UNTIL AT LEAST 15 DAYS AFTER THE ELECTRONIC SMOKING DEVICES MANUFACTURER HAS BEEN GIVEN NOTICE OF THE INTENDED ACTION.

(II) NOTICE UNDER THIS PARAGRAPH SHALL BE SUFFICIENT AND SHALL BE DEEMED RECEIVED BY AN ELECTRONIC SMOKING DEVICES MANUFACTURER IF THE NOTICE IS SENT ELECTRONICALLY TO AN ELECTRONIC MAIL ADDRESS, TO THE ELECTRONIC SMOKING DEVICES MANUFACTURER'S ADDRESS FROM THE MOST RECENT CERTIFICATION FILED UNDER THIS TITLE, OR TO THE MANUFACTURER'S REGISTERED AGENT FOR SERVICE OF PROCESS IN THE STATE.

(4) (I) IF THE ATTORNEY GENERAL REMOVES A BRAND FAMILY, A BRAND STYLE, OR AN ELECTRONIC SMOKING DEVICE FROM THE DIRECTORY, EACH LICENSED RETAILER AND LICENSED VAPE SHOP VENDOR SHALL HAVE 15 DAYS TO REMOVE THE PRODUCT FROM ITS INVENTORY AND RETURN THE PRODUCT TO THE ELECTRONIC SMOKING DEVICES MANUFACTURER FOR DISPOSAL.

(II) AFTER 15 DAYS FOLLOWING THE REMOVAL OF A BRAND FAMILY, A BRAND STYLE, OR AN ELECTRONIC SMOKING DEVICE FROM THE DIRECTORY, THE PRODUCT:

1. SHALL BE IDENTIFIED AS CONTRABAND UNDER §§
13-836, 13-837, AND 13-839 OF THE TAX – GENERAL ARTICLE;

2. MAY NOT BE PURCHASED OR SOLD IN THE STATE;
AND

3. SHALL BE SUBJECT TO SEIZURE, FORFEITURE, AND
DESTRUCTION.”.