

Maryland Vapor Alliance

SB842 – Favorable w/ Amendment

Chair Beidle and Honorable Members of the Committee:

On behalf of the **Maryland Vapor Alliance**, which represents small business vape shops throughout the State of Maryland, I am writing to express **support with amendment** for **Senate Bill 842 – Other Tobacco Products and Electronic Smoking Devices – Seizure and Wholesaler Licensure Requirements**. This legislation's goal of cracking down on bad actors in the tobacco and electronic smoking device (ESD) market is critically important. I thank the sponsor and applaud the bill's intent, but would urge the committee to consider further amendments.

Support for Strengthening Enforcement Authority

First and foremost, I support SB842's core purpose of **increasing the ATCC's enforcement authority**. Strengthening enforcement will protect public health and create a level playing field for law-abiding businesses. The bill rightly recognizes that existing penalties alone are not deterring all bad actors. By allowing regulators to **seize other tobacco products and ESDs sold in violation of the law**, SB842 will empower the state to shut down illegal operators who disregard licensing, tax, and age-restriction laws. Such authority is appropriate and needed – bad actors continue to exploit loopholes and skirt regulations at the expense of our youth and consumers.

Requiring Licensing for All ESD Retailers

I recommend amending SB842 to include a **requirement that all retailers who sell electronic smoking devices obtain a specific ESD retailer license** (in addition to any existing tobacco retail licenses). Currently, Maryland law allows cigarette and OTP licensees to sell ESD products without an additional license. By amending SB842 to explicitly require an ESD retailer license for *any* business that sells vaping products, Maryland can better track and regulate the retail marketplace. This measure will help prevent rogue shops from operating under the radar, and it will facilitate more regular inspections to verify ID checks, tax compliance, and product safety. It aligns with the bill's broader goal of tightening oversight of the tobacco and vaping product supply chain. I urge the Committee to add an amendment creating or reinforcing a specific **"Electronic Smoking Device Retailer License" requirement for all retailers**, which will improve transparency and accountability in this sector.

Enforcing Sales Tax Compliance with Mandatory Penalties

Another important amendment to strengthen SB842 would be to establish **mandatory penalties for businesses that fail to collect or remit required sales taxes on tobacco/ESD products**. With Maryland's recent tax increases on vaping products (e.g. high excise taxes on certain ESD liquids ()), there is a strong incentive for unscrupulous sellers to evade these taxes to gain a price

advantage. Over the interim, our members visited 50+ retailers and only found a handful of them were collecting the proper sales tax, potentially costing the state millions of dollars in revenue. Obviously, the State Comptroller's Office has the authority to audit and penalize businesses that are out of compliance, but audits take time, and there are thousands of retailers in the state. We must ensure that honest businesses who play by the rules are not undercut by tax evaders. We would urge the committee to add language to SB842 creating **clear, mandatory penalties for sales tax noncompliance** in the tobacco and vaping product market. Even a general penalty framework (for example, fines escalating for repeated violations, and potential license suspension for willful tax evasion) would send a powerful message. Right now, some retailers may perceive lax enforcement of the sales and use tax on ESD products. That cannot continue – **failure to enforce tax collection not only deprives the state of revenue, but also allows bad actors to flourish and creates a black market.** We have seen in other contexts that when taxes are high without robust enforcement, illegal markets grow, endangering public safety and **causing the state to lose tax revenue.** By instituting defined penalties for not charging or reporting the required taxes on vape product sales, Maryland will bolster compliance. Such penalties should be firm but flexible – for instance, a schedule of fines (rather than criminal charges) could be appropriate for most violations, with stricter consequences for repeat offenders. The key is that there be *mandatory enforcement action* when a retailer is caught evading sales tax, rather than optional or inconsistent responses.

Restricting Larger-Volume Vape Products to Licensed Vape Shops

Finally, I ask the Committee to consider an amendment to **limit the sale of larger-volume vaping products (over 5 milliliters of e-liquid)** to only those retailers holding a “**Vape Shop Vendor**” license. **This would enhance the state's ability to enforce regulations** on these products. Maryland law already recognizes that e-liquids above 5ml are a distinct category. Currently, ESD products under 5mL are taxed at a rate of 60% of the wholesale price, whereas all other ESD products are taxed at a sales tax rate of 20%. In practice, e-liquids sold in containers larger than 5ml are typically used with open-system vaporizers and **found in specialized vape shops**, rather than the small cartridge-based devices commonly sold at convenience stores. By **allowing only licensed vape shop vendors to sell >5ml vape products**, we can channel these products into a more controlled retail environment. Vape shop vendor licensees are generally specialty retailers who are knowledgeable about the products and who operate adult-only establishments. These items should not be “items of convenience.” Restricting the sale of larger vape products to vape shops would be a sensible control. It also concentrates state oversight. If only vape shops products over 5mL, it becomes easier to verify that appropriate excise tax is being applied and that no untaxed products are filtering into corner stores. The end result would be a tighter regulatory loop around the products that pose the greatest risk of abuse. Importantly, this measure does *not* ban large vaping products for adult consumers; it simply ensures they are sold in a responsible, restricted manner. Given the bill's focus on reinforcing existing regulations, this amendment would enhance Maryland's ability to **enforce its tax laws (on >5ml liquids) and age-21 laws** by narrowing where those products can be sold. I encourage the Committee to adopt an amendment specifying that any e-liquid product over 5ml in volume may only be sold by a holder of a Vape Shop Vendor license.

Conclusion

Thank you for your consideration and for your leadership in addressing the ongoing challenges posed by tobacco and vaping products. By enacting SB842 with these improvements, Maryland can better safeguard public health, support responsible businesses, and hold bad actors accountable.

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