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February 25, 2025

TO: The Honorable Pamela Beidle
Chair, Finance Committee

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

RE: Senate Bill 842 – Business Regulation – Other Tobacco Products and
Electronic Smoking Devices – Seizure and Wholesaler Licensure
Requirements

The Office of Attorney General urges this Committee to report favorably with amendments on Senate Bill 842 – Business Regulation – Other Tobacco Products and Electronic Smoking Devices – Seizure and Wholesaler Licensure Requirements.

Senate Bill 842 includes changes to the Other Tobacco Products (“OTP”) that would improve the current law. These changes include granting the Maryland Alcohol, Tobacco, and Cannabis Commission (“ATCC”) or a peace officer authority to seize OTP that violates Title 16.5 without a warrant; providing a process for the return of seized OTP if there was no violation; and authorizing the ATCC to impose and collect costs of transportation, seizure, and disposal of seized OTP. The Office of the Attorney General (“OAG”) supports these changes.

The OAG believes the changes Senate Bill 842 proposes for existing ESD law would be improved through amendments that would make this Bill more effective. As written, Senate Bill 842 creates a third type of ESD wholesaler license, in addition to the existing licenses for ESD wholesaler distributors and ESD wholesaler importers. This new wholesaler license is much broader than the other two wholesalers and has fewer restrictions. Crucially, the Bill does not eliminate the license exemption contained in Md. Bus. Reg. § 16.7-102, meaning existing

cigarette or OTP wholesalers can continue to operate as ESD wholesalers without an ESD license.

Senate Bill 842 adds a requirement that the new ESD wholesaler licensees must retain and create certain business records, but the Bill does not mandate that the wholesalers provide reports or returns to any State agency using these records. Further, Senate Bill 842 makes these records available only to the ATCC, and does not explain how or when the ATCC would have reason to examine the records. Notably, the Comptroller, Department of Health, or OAG are not authorized to access these records. Additionally, Senate Bill 842's new requirements apply only to the new ESD wholesaler licensee, a feature that may discourage businesses from getting the new license to avoid any such onerous record-keeping requirements.

Senate Bill 842 authorizes the ATCC to seize ESDs sold or offered for sale in violation of Title 16.7 without a warrant, provides a process for the return of seized ESD if there was no violation, and authorizes the ATCC to impose and collect costs of transportation, seizure, and disposal of the ESDs it seizes. Although this explicit grant of authority to seize ESDs is a welcome clarification of the ATCC's power, Senate Bill 842 does not provide the ATCC with a clear legal basis for using this power, as only the Department of Health is currently authorized to inspect ESD retailers. Because there are only a few grounds for violating the current law governing ESDs, primarily concerning use of the license, and there is already a process for notice and hearings provided in the existing law, Senate Bill 842 is largely duplicative of current law. Nor does it provide any substantive basis the ATCC may rely on to exercise its new ESD seizure authority, severely limiting the impact of that authority.

The OAG recommends certain amendments that would enable Senate Bill 842 to better effectuate its goals of improving enforcement of ESDs. First, the Bill should strengthen the licensing system by requiring that all ESD businesses that manufacture, distribute, or sell ESDs in Maryland obtain an ESD license, and eliminate the ESD license exemption in the existing law. To ensure that ESDs are less accessible to youth, the Bill should eliminate the internet sales loophole for ESD manufacturers. It should also require that all entities in the chain of distribution buy and sell to entities that have Maryland ESD licenses.

To improve enforcement, Senate Bill 842 should authorize the ATCC to conduct unannounced inspections of licensed ESD businesses and allow the Maryland Department of Health to refer violations of the law to the ATCC for further enforcement. Currently, there are no Maryland laws concerning the ESD products permitted to be sold in the State. Senate Bill 842 could also create a system to authorize ESDs for sale in Maryland so that only authorized products may be legally sold in the State. Unauthorized ESDs should be deemed contraband and the ATCC may seize and dispose of such products. To better learn what products are sold, the bill should expand its record-keeping provisions to require regular reporting of ESD sales to the State to enable the State to track the products sold and ensure collection of all taxes. Finally, to improve inter-agency cooperation and improved enforcement of all laws, the Bill should enable the Comptroller and OAG to access the records of ESD sales.

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For the foregoing reasons, the Office of the Attorney General urges a favorable with amendments report on Senate Bill 842.

cc: Committee Members