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Written Testimony of

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Concerning

S.B. 3: Electronic Smoking Devices, Other Tobacco Products, and Cigarettes

Before the

**Senate Budget and Taxation Committee
Maryland General Assembly**

Chair and Distinguished Members of the Budget and Taxation Committee,

Good afternoon. My name is Brandon K. Hatton and I am the Sr. Regional Manager for JUUL Labs Inc. (JLI) and I appreciate the opportunity to present this testimony. I am writing today to provide my insights and general observations on S.B. 3, which concerns the taxation of electronic smoking devices.

JLI exists to transition adult smokers away from combustible cigarettes. We pursue this mission while actively combatting underage use of our products. A robust regulatory framework that preserves access to electronic smoking devices, better known as Electronic Nicotine Delivery Systems (ENDS), for adults, while addressing access, appeal and underage use is a critical foundation to accomplishing our mission and we support efforts to put that framework in place.

ENDS products hold the potential for harm reduction and provide an alternative to adult smokers interested in transitioning away from combustible cigarettes. Therefore, the government should not disincentivize smokers from transitioning to ENDS by levying exorbitant excise taxes on this new and emerging category. While still a small part of the overall tobacco product category, ENDS products could lead to the end of smoking combustible cigarettes, which continue to take the lives of nearly 500,000 Americans each year.

ENDS are generally classified into two distinct categories: 1) “closed systems”, and 2) “open systems”.

- **Closed systems** consist of pre-filled, sealed cartridges, or pods, that are typically low volume and have variable degrees of nicotine strength.
- **Open systems** are refilled manually, generally require much more liquid than closed systems, and users of these systems often have their preferred liquid and preferred nicotine strength mixed, or “manufactured”, inside a vape shop.

Given the inherent differences between open and closed systems, policymakers should be mindful of how any tax will impact the category as a whole. Policymakers should also consider whether the government is able to enforce whatever tax regime it enacts. The administrative challenges regarding the taxation of ENDS products stem from the nascent nature of an industry that offers products that are not uniform across the product category. Unlike traditional tobacco products, which are generally homogenous across product class, ENDS products can vary drastically depending on the e-liquid solution and delivery device.

States have taken various approaches to tax ENDS. Many states have instituted volume-based taxes, which impose the tax on milliliters of vaping liquid, ranging from 5 cents to 40 cents per milliliter. Other states have imposed a tax at the wholesale level based on a percentage of the wholesale cost of the product. Last year, the State of New York enacted a 20% tax levied at the point-of-sale, which the state believes could generate more revenue as well as provide more oversight of the category by tracking the product through the entire supply chain and ensuring the appropriate tax is collected where the manufacturer, wholesaler, and retailer can be the same entity with the ability to manipulate the tax when based on a wholesale price.



Underage Prevention

Although S.B. 3 concerns taxation, I would like to take this opportunity to address the importance of ensuring that ENDS products only end up in the hands of our intended consumers: current adult smokers. As a company, it is essential that we do our part in preventing underage use of our products. Underage use is antithetical to our mission, and we have taken definitive steps towards the goal of restricting it, including:

- Voluntarily discontinuing the sale of all flavored products other than Virginia Tobacco, Classic Tobacco, and Menthol, unless and until the FDA determines through its Premarket Tobacco Product Application (PMTA) process that their sale is appropriate for the protection of public health.
- Restricting sales on our ecommerce platform (JUUL.com) through industry-leading age-verification technology, including using third parties to verify the purchaser's personal information against publicly-available records, and limiting the amount of product that can be purchased.
- Establishing our Retail Access Control Standards (RACS) program for retailers of JUUL products, a technological standard at the point-of-sale that requires electronic ID scanning to verify age and ID validity and limits the amount of product that can be purchased. In the spring of 2019, JUUL Labs ran a pilot study among retail outlets that had adopted RACS, which showed that the overall age-verification failure rate fell to just 0.2% after implementation.¹
- Instituting a "three-strikes policy" as part of our mystery-shopper program that will prohibit authorized retailers from selling JUUL products for at least one year if they incur three violations for either age-verification or bulk-purchasing non-compliance within a calendar year.
- Ceasing the promotion of JUUL products on social media and aggressively enforcing against third-party posts that inappropriately depict, or sell, JUUL products. In partnership with the social media platforms, we have removed close to 2000 inappropriate accounts reaching 1.5 million followers. We have also removed an additional 45,000 illegal social media listings for JUUL products.
- Suspending the advertising and promotion of JUUL products through broadcast media (e.g., television and radio), print publications, and digital channels.

While JLI has taken these actions, we strongly believe that category-wide regulation and enforcement is necessary. It will require a more comprehensive regulatory framework, and all parties working collaboratively with regulators, policymakers, and stakeholders to restrict underage access and use, while preserving the availability of ENDS products as an alternative for adult smokers.

In conclusion, JLI shares a common goal with policymakers, regulators, parents, school officials, and community stakeholders - **prevent the use of tobacco and ENDS products, including JUUL products, by America's youth.** We are committed to stopping underage access of JUUL products, and no young person or non-nicotine user should ever try JUUL. JLI strongly supports category wide restrictions that help to deter youth usage yet recognize the important role that ENDS products serve in off-ramping current smokers. We have and continue to conduct proactive enforcement in retail settings, are working with retailers to promote retail compliance, and have increased our own penalties on retailers that sell to underage or permit bulk sales.

Although we recognize there are disagreements within our industry, if a tax is to be enacted on the category, we believe, for the reasons set forth above, a low and specific rate based on volume of e-liquid is the appropriate approach. We are here to serve the tax committee members and staff to help inform you of the current trends and potential pitfalls in instituting a new tax on an ever-evolving product category.

Thank you. I look forward to engaging with you further on this issue.

Brandon K. Hatton
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JUUL Labs Inc.

¹ "Pilot Study of RACS Program Shows Dramatic Improvement in Retailer Compliance." *JUUL Newsroom*, JUUL Labs Inc, 10 Oct. 2019, newsroom.juul.com/pilot-study-of-racs-program-shows-dramatic-improvement-in-retailer-compliance/.