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Written Testimony of

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concerning

H.B. 3 - Electronic Smoking Devices, Other Tobacco Products, and Cigarettes - Taxation and Regulation

Before the

Senate Finance Committee
Maryland General Assembly

Chair Kelley, Vice Chair Feldman, and Members of the Finance Committee,

On behalf of JUUL Labs, Inc. (JLI), thank you for the opportunity today to provide written comments as this committee considers House Bill 3, which, if enacted, would unfortunately deter Maryland's adult smokers from switching from combustible cigarettes to non-combustible alternatives, including Electronic Smoking Devices, better known as Electronic Nicotine Delivery Systems (ENDS). As the current version of the legislation would effectively prohibit our company, and companies like ours, from being able to sell cartridge-based ENDS in the state, we respectfully ask you to table consideration of this legislation until the committee has more time to hear from stakeholders and consider the legislation's full ramifications.

JLI's mission is to transition the world's billion adult smokers away from combustible cigarettes, eliminate their use, and combat underage usage of our products. However, we know that we will not succeed in our mission without a comprehensively regulated category that ensures vapor products only end up in the hands of our intended consumers: adult smokers. Underage use of ENDS products, including JUUL, is a serious issue that can undermine the risk-reduction potential of these alternatives for adult smokers. No one underage should have access to or use any tobacco or nicotine-containing product.

Premarket Tobacco Product Application (PMTA)

An important component of the regulatory framework of this category is the approaching deadline for applications to the U.S. Food & Drug Administration (FDA). The Federal Tobacco Control Act requires manufacturers of new tobacco products, including ENDS, to submit a PMTA for each new tobacco product and obtain a market authorization order before they can market and sell their products. Given that the FDA did not deem ENDS as "tobacco products" until August 8, 2016, the FDA delayed enforcement of ENDS products that were already on the market before August 8, 2016. Applications for all currently marketed ENDS products, including JUUL, are due on May 12, 2020.

The PMTA is a rigorous, science-based process through which the manufacturer must demonstrate that the new tobacco product is "appropriate for the protection of the public health" (APPH), weighing the risks and benefits to the population as a whole, including users and nonusers of the tobacco product. As the FDA reviews the scientific evidence in this area, they have the authority and expertise to deny applications for ENDS products that they determine are not APPH. When determining whether an ENDS product is APPH the FDA is required[i] to consider the risks and benefits to the population as a whole, including users and nonusers of the ENDS product, by taking into account:

- the increased or decreased likelihood that existing users of tobacco products will stop using such products; and
- the increased or decreased likelihood that those who do not use tobacco products will start using such products.

Products that fail to demonstrate that they would have a net benefit to the population as a whole will not receive a marketing order from the FDA.

An overly restrictive approach to ENDS, including prohibiting the sale of cartridge-based ENDS before they have undergone FDA review, would significantly undermine efforts to encourage adult smokers to switch to reduced-risk noncombustible products. JLI supports the FDA's review process and believes that it has the public health expertise to make these science-based determinations. Therefore, any ENDS product that the FDA approves through the PMTA process should be permitted to be sold in this state.

Underage Prevention

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.[ii]
- 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.

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.** I applaud the great work of you and your colleagues in considering a comprehensive, coordinated strategy to appropriately regulate tobacco and nicotine products. The work of the General Assembly last year to raise the minimum age to 21 is perhaps the biggest step in reducing underage access and use of tobacco and ENDS. After all, nearly 94%[iii] of smokers started before the age of 21. 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.

In conclusion, we believe that H.B. 3 is a misguided approach to regulating this category. Not only would it punish adult consumers who have or are considering transitioning from combustible cigarettes to a reduced harm non-combustible alternative, it will likely result in black market or cross-border sales that occur outside of Maryland's regulated, law-abiding retailers. Therefore, I urge you to delay consideration of H.B. 3 and work with all stakeholders over the Summer, after the deadline for manufacturers to submit their products to the FDA for market approval, to develop a more balanced approach to tobacco and nicotine regulation.

Thank you.

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[i] Premarket Tobacco Product Applications and Recordkeeping Requirements, 84 Fed. Reg. 50566 (proposed Sept. 25, 2019).

[ii] "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/.

[iii] American Lung Association, Tobacco 21 Laws: Raising the Minimum Sales Age for All Tobacco Products to 21, https://www.lung.org/our-initiatives/tobacco/cessation-and-prevention/tobacco-21-laws.html