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Written Testimony

To: Maryland House Economic Matters Committee
From: Ronald A. Ward Jr., Esq.
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Re: Maryland House Bill 134

I. Introduction

My name is Ronald Ward and I am a life-long resident of Maryland. I have been a vaper for over 10 years, a smoke free alternatives activist for over a decade and have owned and operated an electronic cigarette store in Baltimore County, MD for the past 7 years.

House Bill 134, as written, shows a lack of knowledge of the products it intends to regulate, namely Electronic Smoking Devices (hereinafter "ESDs") and contains a highly subjective, overly broad definition of "Flavored Tobacco Product". Most importantly, it attaches criminal penalties to an extremely vague definition. For these reasons, HB 134 will enact a vague product standard that will complicate compliance for retailers and will be inevitably ripe for unfair enforcement standards. As a possibly unintended consequence of its language, it will only allow for unflavored ESD liquid which will destroy the grassroots, mom and pop vaping industry in Maryland. HB 134 will also force former smokers back to the big tobacco companies or the black market. I respectfully urge this Committee to issue an unfavorable report for House Bill 134, or, in the alternative, create and exemption for licensed Vape Shops.

II. Proposed Legislation

For the past ten years and particularly, in September of 2019, our industry has been under attack at the federal and state level and falsely blamed for people dying from using nicotine vapor products. Please note that, despite testimony to the contrary, the culprits of EVALI were black market drug dealers selling THC cartridges containing oil. All nicotine-based ENDS liquids are water based. Since the late 2019 misinformation campaign, our sales have significantly declined while we struggle to help former smokers and survive this COVID pandemic.

Different people have different senses of taste and smell. The smell of the liquid itself, the flavor of the vapor and the exhaled vapor most definitely smell like different things to different people. I have not vaped a single tobacco flavor with an exhaled aroma of tobacco. Unlike tobacco smoke, the taste and smell of vaped flavors are not obvious.

The definition of “Flavored Tobacco Product,” on Page 2, lines 13 to 20, and elsewhere in the bill, would constitute a prohibition of ALL flavored ESD liquid, including tobacco flavors. More importantly, the definition is highly vague in that it is defined as “a taste or smell, other than that of tobacco, that is distinguishable by an ordinary consumer either before or during the consumption process”. This definition is repeated multiple times in HB 134 without a definition of the senses of taste and smell of the “ordinary consumer”. Most egregiously, on page 13, lines 20-23, HB 134 imposes criminal penalties against anyone who sells any flavored tobacco product with each day constituting a separate offense.

The Bill goes even further on page 18, line 20 to page 19, line 3 where it creates the presumption that a tobacco product is flavored based simply upon a public statement that the flavor produces a taste or smell other than tobacco. Cigarettes contain flavors other than tobacco without publicly disclosing the fact, whereas, U.S. ESD liquid companies have always been transparent and detailed with the descriptions of their products. Note that no ESD liquid product currently on the market can claim a one-to-one flavor experience with combustible tobacco. Much like cigarettes, ALL tobacco flavored ESD liquids have other flavors (other than mint and menthol) added to the harsh and unpalatable untreated tobacco leaf flavor. House Bill 134 would prohibit ALL flavored ESD liquids, including tobacco-based flavors. The language of this bill would leave only completely unflavored ESD liquid on the market in Maryland.

Additionally, The Food and Drug Administration (FDA) is already taking action on this matter. Rather than claim this regulatory authority, the legislature would better serve Maryland citizens by deferring to the more deliberative FDA in this matter.

III. Importance of legitimate access to flavors for adult ESD users

ESD products do not rely on combustion of leaf tobacco to work. Instead, a liquid solution is aerosolized by a heating element which makes the flavor experience, in both liquid and vapor form, remarkably different from that of the taste and smell of combustible tobacco products (before and after the actual burning of the product). This allows many adults to transition away from the deadly habit of smoking tobacco.

If all flavors were prohibited in the State of Maryland, the consequences could be severe to the health of these former adult smokers. Also, many people who vape report that tobacco flavored ESD liquids can act as a relapse trigger and, therefore, wish to vape flavors other than tobacco, including fruits and menthol. Flavors are the reason why ESD liquids work to help

adult smokers switch from smoking traditional cigarettes. Most vapers find tobacco flavors unappealing. Specialized Vape Shops like my business rely heavily on the sale of flavored ESD liquid and, if Maryland consumers are unable to purchase flavored ESD liquid from reputable, licensed retail establishments, they will inevitably turn to the black market or attempt to manufacture their own liquid by buying the components online. Even worse, many will revert to smoking tobacco. This would only worsen the situation in that would allow for more youth access, youth smoking and may create even more ESD liquid safety concerns.

Plus, as an emergency bill, it would give retailers no time to adjust and many would lose significant inventory. Furthermore, it is against the interest of public health to make these products inaccessible to former adult smokers in order to possibly make them less appealing to children. No legislation will keep children from mimicking forbidden adult behaviors regardless of flavor.

But, if this committee intends to move forward with a favorable report for House Bill 134, I urge you to amend the bill to include an exemption for adult-only specialty tobacco and vapor retailers. Vape shops, such as mine, act as the true “gatekeepers” against youth use. The proof is in the numbers. According to the FDA Compliance Check Inspection of Tobacco Product Retailers (through November 30, 2019), out of 222 violations, not a single vape shop was cited for selling vapor products to underage consumers. Vape shops only sell ESD products and provide expert instruction and technical support to adults over the age of 21 who are transitioning from cigarettes. Due to these facts, vape shop owners take youth usage very seriously and are acting as a vital part of the solution. We must also consider whether the recent Tobacco 21 laws are effective before we take these drastic measures that basically constitute prohibition.

It is also relevant that this Committee has contemplated banning the indoor use of ESDs since 2010 and has declined to issue any favorable reports. Furthermore, this Bill is identical to a Bill last session which was not issued a favorable report nor was it properly edited to create a fair and workable piece of legislation. Now, in the current climate, this Committee is contemplating whether to destroy the entire ESD small business community in Maryland. That is quite a leap. We are, also, like most other small businesses, seriously struggling during these unprecedented times.

V. Conclusion

I recommend that the House Economic Matters Committee issue an unfavorable report for House Bill 134. In the alternative, I request that the State allow an exemption for licensed Vape Shops in Maryland whose products are only accessible to adults over the age of 21. Thank you for considering my comments and please contact me with any questions or concerns. I will contact your staff to bring your attention to my written testimony and express my desire to discuss this issue.