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February 10, 2021

The Honorable Derek Davis  
Chair, House Economic Matters Committee  
House Office Building, Room 134  
Annapolis, MD 21401-1991

## RE: House Bill 134 – “Business Regulation – Flavored Tobacco Products – Prohibitions” – Letter of Support

Dear Chair Davis:

The Maryland State Advisory Council on Health and Wellness (the Council) is submitting this letter of support for House Bill 134 (HB 134) titled: “Business Regulation – Flavored Tobacco Products – Prohibition.” HB 134 is an emergency bill that prohibits businesses licensed to manufacture, sell, buy, and store tobacco products from manufacturing, shipping, importing, or selling any flavored tobacco products, which include cigarettes, other tobacco products, and electronic smoking devices (ESDs). Flavors are defined within the bill and include mint and menthol. Sales of flavored tobacco products in vending machines are also prohibited.

The Council supports HB 134 as it seeks to promote health and prevent disease by ending the sale of flavored tobacco products, including menthol. Candy and fruit flavored little cigars/cigarillos, hookah, and smokeless tobacco continue to be sold – sales of flavored cigars increased by nearly 50% since 2008 and they now comprise a majority of the cigar market.<sup>1</sup> Following a partial ban of fruit flavored ESDs, use of mint and menthol flavors surged between 2018 and 2019.<sup>2,3</sup> Menthol flavoring has been evidenced as intensifying nicotine dependence and the urge to smoke, making it harder for smokers using menthol to quit.<sup>4</sup> Further, ESDs are not an FDA-approved cessation device, and use of ESDs may lead to dual use of ESDs and cigarettes with associated health risks in adult users attempting to quit smoking.<sup>5,6,7,8</sup> Approximately one in two adult smokers are dual users of ESDs and

<sup>1</sup> Cigar Market since the Tobacco Control Act Tob Regul Sci. 2017 Apr; 3(2 Suppl 1): S8–S16.

<sup>2</sup> [351883/#\\_ffn\\_sectitleDelnevo CD, Giovenco DP, Miller Lo EJ. Changes in the Mass-merchandise Cigar Market \[7:3\(2 Suppl 1\):S8-S16. doi:10.18001/trs.3.2\(suppl1\).2](#)

<sup>3</sup> McIntosh S, Ossip D, O'Connor RJ. Use of Flavored E-Cigarettes and the Type of E-Cigarette Devices Used Wave 3 of the Population Assessment of Tobacco and Health Study (2015-2016). *Int J Environ Res Public Health*. 2019;17(16):5699. doi:10.3390/ijerph16162991

<sup>4</sup> Administration Combating Epidemic of Youth E-Cigarette Use with Plan to Clear Market of Unauthorized, Food and Drug Administration. Published September 11, 2019. Accessed January 25, 2021. [https://www.fda.gov/oc/2019/09/11/fda-combating-epidemic-youth-e-cigarette-use-plan-clear-market-unauthorized-non-cigarettes-as-a-reinforcer-of-smoking-behavior](#). Nicotine Tob Res. 2010;12(Suppl 2):S110-S116.

<sup>5</sup> What We Know About Electronic Cigarettes. Smokefree.gov. Accessed January 25, 2021. [https://www.smokefree.gov/what-we-know-about-electronic-cigarettes](#)

<sup>6</sup> Analysis of electronic cigarette use and smoking cessation. *JAMA Intern Med*. 2014;174(5):812-813.

<sup>7</sup> OR, Hofstetter CR. E-cigarette use in the past and quitting behavior in the future: a population-based study. *Am J Public Health*. 2014;104(12):1213-1219. doi:10.2105/AJPH.2014.302482

<sup>8</sup> Smoking Cessation: A Report of the Surgeon General.; 2020. Accessed January 25, 2021. [https://www.surgeongeneral.gov/library/reports/smoking-cessation-full-report.pdf](#)

cigarettes.<sup>9</sup>

Flavors are a driving force behind the youth ESD epidemic, which has impacted Maryland youth. The most recent data available from the 2018-2019 school year found one in four high school students reported current ESD use, a 73 percent increase from 2016-2017. Nearly all – 97 percent – used flavors *other* than tobacco flavor.<sup>10</sup> Youth perceptions that smokers have more friends or ‘look cool’ are the highest they have been since 2000, likely due to marketing and use of ESDs. Recent national level data indicate that while ESD use decreased in high school students from 2019 to 2020 overall use remains high, with nearly 20 percent of high school students reporting current ESD use in 2020.<sup>11</sup> Most ESDs contain nicotine, even those that are candy- or fruit-flavored, which can have particularly negative health consequences for youth and young adults. Because their brains are still developing until around age 25, more deleterious effects can include stronger nicotine addiction, priming the brain for use of other addictive substances, reduced impulse control, deficits in attention and cognition, and mood disorders.<sup>12</sup>

The Council agrees with the following statements as they relate to the passage of HB 134:

- In 2020, high school students were more likely to smoke cigars than cigarettes.<sup>xi</sup> Among youth aged 12 to 17 that smoke cigars nearly three-quarters stated the availability of flavored products as their primary reason for smoking cigars.<sup>xii</sup>
- Flavored tobacco products are not marketed and sold uniformly across the U.S., with marketing for menthol products as well as little cigars/cigarillos more prevalent in low-income and African American neighborhoods.<sup>13</sup>
- Flavored tobacco products, particularly menthol cigarettes, are used at disproportionately higher rates by racial and ethnic minorities, lower income, LGBT (Lesbian, Gay, Bisexual, and Transgender), and teen smokers, leading to health disparities among vulnerable populations.<sup>14,15</sup> Maryland data shows that Black/African American adults are twice as likely to smoke menthol cigarettes compared to White adults. Related health disparities from tobacco use continue to affect Blacks/African Americans disproportionately, who are more likely to die from smoking-related diseases.<sup>xv,16,17,</sup>
- Menthol’s “cooling” flavoring makes tobacco easier to smoke and intensifies nicotine dependence and the urge to smoke, making it harder for smokers using menthol to quit.<sup>v,18</sup>
- Flavors make tobacco and ESD products seem less harmful; however, research suggests flavored products are equally harmful. A study on the effects of exposure to flavored and non-flavored cigar smoke on lung tissue showed similar levels of toxicity and cell death.<sup>19</sup>
- Many flavors used in ESDs have not been proven to be safe when heated and inhaled, and some of the flavors that have been tested show damaging effects, including toxic effects on the lungs and changes in inflammatory responses.<sup>20,21</sup>

<sup>9</sup> U.S. Centers for Disease Control and Prevention. Adult Smoking Cessation—The Use of E-Cigarettes. www.cdc.gov. Published January 23, 2020. Accessed January 25, 2021. [https://www.cdc.gov/tobacco/data\\_statistics/sgr/2020-smoking-cessation/fact-sheets/adult-smoking-cessation-e-cigarettes-use/index.html](https://www.cdc.gov/tobacco/data_statistics/sgr/2020-smoking-cessation/fact-sheets/adult-smoking-cessation-e-cigarettes-use/index.html)

<sup>10</sup> Maryland Department of Health. Monitoring Changing Tobacco Use Behaviors: 2000-2018. Baltimore: Maryland Department of Health, Prevention and Health Promotion Administration, Cancer and Chronic Disease Bureau, Center for Tobacco Prevention and Control, September 2020

<sup>11</sup> Gentzke AS, Wang TW, Jamal A, et al. Tobacco Product Use Among Middle and High School Students — United States, 2020. MMWR Morbidity and Mortality Weekly Report. 2020;69(50):1881-1888. doi:10.15585/mmwr.mm6950a1

<sup>12</sup> U.S. Department of Health and Human Services. E-Cigarette Use among Youth and Young Adults: A Report of the Surgeon General.; 2016. Accessed January 25, 2021. [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_SGR\\_Full\\_Report\\_508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Full_Report_508.pdf)

<sup>13</sup> Lee JG, Henriksen L, Rose SW, Moreland-Russell S, Ribisl KM. A Systematic Review of Neighborhood Disparities in Point-of-Sale Tobacco Marketing. Am J Public Health. 2015;105(9):e8-e18. doi:10.2105/AJPH.2015.302777

<sup>14</sup> Fallin A, Goodin AJ, King BA. Menthol cigarette smoking among lesbian, gay, bisexual, and transgender adults. Am J Prev Med. 2015;48(1):93-97. doi:10.1016/j.amepre.2014.07.044

<sup>15</sup> Lawrence D, Rose A, Fagan P, Moolchan ET, Gibson JT, Backinger CL. National patterns and correlates of mentholated cigarette use in the United States. Addiction. 2010;105(s1):13-31. doi:10.1111/j.1360-0443.2010.03203.x

<sup>16</sup> U.S. Department of Health and Human Services. Behavioral Risk Factor Surveillance System. ; 2019. Accessed January 25, 2021. [https://www.cdc.gov/brfss/annual\\_data/2019/pdf/overview-2019-508.pdf](https://www.cdc.gov/brfss/annual_data/2019/pdf/overview-2019-508.pdf)

<sup>17</sup> U.S. Department of Health and Human Services. The Health Consequences of Smoking - 50 Years of Progress.; 2014. Accessed January 25, 2021. [https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf\\_NBK179276.pdf](https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf)

<sup>18</sup> Levy DT, Blackman K, Tauras J, et al. Quit attempts and quit rates among menthol and nonmenthol smokers in the United States. Am J Public Health. 2011;101(7):1241-1247. doi:10.2105/AJPH.2011.300178

<sup>19</sup> Ghosh A, Nethery RC, Herring AH, Tarran R. Flavored little cigar smoke induces cytotoxicity and apoptosis in airway epithelia. Cell Death Discov. 2017;3:17019. Published 2017 Apr 24. doi:10.1038/cddiscovery.2017.19

<sup>20</sup> Higham A, Rattray NJ, Dewhurst JA, et al. Electronic cigarette exposure triggers neutrophil inflammatory responses. Respir Res. 2016;17(1):56. Published 2016 May 17. doi:10.1186/s12931-016-0368-x

<sup>21</sup> Fetterman JL, Weisbrod RM, Feng B, et al. Flavorings in Tobacco Products Induce Endothelial Cell Dysfunction. Arteriosclerosis, Thrombosis, and Vascular Biology. 2018;38(7):1607-1615. doi:10.1161/atvbaha.118.311156

- Flavors contribute to continued vaping as people who use flavored ESDs were more likely to report greater satisfaction and self-perceived addiction than users of non-flavored ESDs.<sup>22</sup>

Additionally, smoking and vaping pose additional risks related to COVID-19. The CDC has concluded that smoking is a risk factor for severe COVID related complications.<sup>23</sup> A national survey found youth vapers are more likely to report a positive COVID-19 diagnosis than non-users.<sup>24</sup> Any behavior – such as smoking or vaping – that prevents users from wearing a face covering and requires them to frequently touch their mouths and faces can increase the risk of contracting COVID-19 for both themselves and others.<sup>25</sup>

The Council respectfully urges this Committee to approve HB 134 as a critical public health measure to reverse alarming trends in youth tobacco use and tobacco-related health disparities, driven by widespread availability of flavored ESDs and other tobacco products, specifically menthol flavored products that are attractive to youth and African American tobacco users. Importantly, HB 134 seeks to ban the sale of all flavors, including mint and menthol, for all tobacco products. Flavor bans that exempt mint and menthol are expected to further increase use of these products in youth and other populations, thereby exacerbating underlying tobacco-related health disparities.<sup>26</sup> Prohibiting the sale of all flavors will make these products less attractive to youth and young adults, thereby helping prevent youth and young people from ever starting tobacco use, and encouraging adult tobacco users to use FDA-approved cessation aids to overcome nicotine addiction, ultimately saving lives and improving the health of Marylanders.

Sincerely,



Chair, State Advisory Council on Health and Wellness

<sup>22</sup> Landry RL, Groom AL, Vu TT, et al. The role of flavors in vaping initiation and satisfaction among U.S. adults. *Addict Behav.* 2019;99:106077. doi:10.1016/j.addbeh.2019.106077

<sup>23</sup> U.S. Centers for Disease Control and Prevention. People with certain medical conditions. Centers for Disease Control and Prevention. Published February 11, 2020. Accessed January 25, 2021. <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

<sup>24</sup> Gaiha SM, Cheng J, Halpern-Felsher B. Association Between Youth Smoking, Electronic Cigarette Use, and COVID-19. *Journal of Adolescent Health.* 2020;67(4):519-523. doi:10.1016/j.jadohealth.2020.07.002

<sup>25</sup> World Health Organization Regional Office for the Eastern Mediterranean. WHO EMRO | Tobacco and waterpipe use increases the risk of suffering from COVID-19 | Know the truth | TFI. [www.emro.who.int](http://www.emro.who.int). Published 2020. Accessed January 25, 2021.

<http://www.emro.who.int/tfi/know-the-truth/tobacco-and-waterpipe-users-are-at-increased-risk-of-covid-19-infection.html>

<sup>26</sup> Leventhal AM, Miech R, Barrington-Trimis J, Johnston LD, O'Malley PM, Patrick ME. Flavors of e-Cigarettes Used by Youths in the United States. *JAMA.* 2019;322(21):2132. doi:10.1001/jama.2019.17968