

MDDCSAM - SB 378 FAV - Local Control - Tobacco Bal

Uploaded by: Adams, MD, Joseph

Position: FAV

SB 378 Baltimore City - Cigarettes, Other Tobacco Products, and Electronic Smoking Devices - Local Laws Authorization

Senate Finance Committee February 11, 2021

Joseph A. Adams, MD, FASAM

SUPPORT

Anti-preemption policies, i.e. policies which prevent preemption of local laws, is an important public health principle according to the American Public Health Association (APHA), the Center for Disease Control and Prevention (CDC), the Office of Disease Prevention and Health Promotion of the U.S. Dept of Health & Human Services (HHS), and others.

An illustration is the process by which the law establishing smoke-free public places in Maryland was passed in 2007. **I and other tobacco control advocates spent years working to enact a series of local smoke-free laws, knowing that this was our only path to a state-wide law.** Montgomery County was first, followed by Prince Georges and Talbot, then Charles and Howard. When Baltimore City became the sixth Maryland jurisdiction to enact a local smoke-free ordinance, the Maryland General Assembly was able to enact a statewide law the same year. This was followed by a 33% decline in Maryland smoking rates between 1998 to 2009, double the rate of decline nationally. ('Ban on smoking becomes Md. law.' May 18, 2007 The Baltimore Sun <https://www.baltimoresun.com/news/bs-xpm-2007-05-18-0705180101-story.html>)

According to a **Policy Statement by the APHA (November 2015) entitled 'Impact of Preemptive Laws on Public Health,'** "...State and local governments are often at the forefront of public health policy-making. **Some of the most effective public health policies have been enacted at the state and local levels.** Legislators should support evidence-based policy-making by considering the impact preemptive laws may have on state and local public health efforts." <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2016/01/11/11/08/impact-of-preemptive-laws-on-public-health>.

According to **the CDC** in an online article entitled '**Preemption Can Impede Local Tobacco Protection Efforts,**' "Communities have adopted and put into action some of the strongest, innovative, and effective tobacco control policies that have served as a catalyst for transitioning social norms about tobacco use. . . **The tobacco industry has historically supported state preemption laws as a way to reverse existing local tobacco control laws and prevent future enactment of such laws.**" <https://www.cdc.gov/statesystem/factsheets/preemption/Preemption.html>

One of the objectives listed in the HHS report 'Healthy People 2030,' is to "**Eliminate policies in states, territories, and the District of Columbia that preempt stronger local tobacco control policies.**" <https://health.gov/healthypeople/search?query=preemption>

2a -FIN -SB 378 - MACHO - LOS.pdf

Uploaded by: Bennardi, Maryland Department of Health /Office of Governmen

Position: FAV



**2021 SESSION
POSITION PAPER**

BILL: Senate Bill 378 – Baltimore City - Cigarettes, Other Tobacco Products, and Electronic Smoking Devices – Local Laws Authorization

COMMITTEE: Senate Finance Committee

POSITION: Letter of Support

BILL ANALYSIS: Senate Bill (SB) 378 would authorize Baltimore City to enact and enforce local laws regulating sale and distribution of cigarettes, other tobacco products, and electronic smoking devices, subject to certain exceptions.

POSITION RATIONALE: The Maryland Association of County Health Officers (MACHO) supports SB 378 because it would codify public health policy that has been shown to reduce tobacco use.¹ By enabling Baltimore City to enact and enforce laws relating to the sale and distribution of tobacco products that are more stringent than state laws, SB 378 would create opportunities for the City to build upon policies adopted by the state legislature. Maryland counties and municipalities have been unable to take such actions since 2013 when the Maryland Court of Appeals held that state law preempted local laws regarding tobacco control in the *Altadis* decision. SB 378, if enacted, would be a clear statement by the General Assembly that local authority to exceed the tobacco control measures regarding sale and distribution in state law is the express intent of the body.

The ability to legislate at the local level regarding the sale and distribution of tobacco products is important for these reasons: First, the local legislative process can act more quickly and responsively to local needs than the state legislative process. For example, when the Prince George’s County bill that gave rise to the *Altadis* case was considered by the County Council, the local health department and local police department supported the bill and cited their knowledge of local issues in their testimony and feedback on drafts of the bill, which were incorporated into the final bill by the County Council.² However, without SB 378, if the City now sees the opportunity for legislative action based on local issues but is forced to appeal to the state legislature for a state-wide policy solution, a consensus on a state-wide bill may not be reached. Second, the tobacco industry prefers to lobby at the state-level rather than the local level because of the difficulty it encounters in influencing local policymaking.³

Baltimore City has the highest per capita tobacco retailers in the entire state with over 1600 currently. SB 378 will give the City health department the tools they need to protect the health of their City residents.

¹ “A broad consensus exists among public health practitioners and tobacco control advocates that preemption has an adverse impact on tobacco control efforts.” Mowery, P.D., Babb, S., Hobart, R., Tworek, C., MacNeil, A. "The Impact of State Preemption of Local Smoking Restrictions on Public Health Protections and Changes in Social Norms", *Journal of Environmental and Public Health*, (2012). vol. 2012, . <https://doi.org/10.1155/2012/632629>. “Research has documented the effectiveness of laws and policies in a comprehensive tobacco control effort to protect the public from secondhand smoke exposure, promote cessation, and prevent initiation...”. Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs—2014*. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.

² See “Action Summary”, <https://princegeorgescountymd.legistar.com/View.ashx?M=F&ID=4035940&GUID=1838DF24-F801-4E98-BEE6-CFE0CC349DE8>.

³ A former Maryland lobbyist for the tobacco industry said it bluntly to the *Journal of the American Medical Association*: “We could never win at the local level.” Skolnick, A. (1995). *Cancer Converts Tobacco Lobbyist: Victor L. Crawford Goes On the Record*. *JAMA*, 274(3), 199-202.

To enable counties to enact tobacco control solutions that best meet their needs, and to limit the reach of the Big Tobacco lobby, the Maryland Association of County Health Officers submits this letter of support for SB 378. For more information, please contact Ruth Maiorana, MACHO Executive Director at rmaiora1@jhu.edu or 410-937-1433. *This communication reflects the position of MACHO.*

615 North Wolfe Street, Room E 2530 // Baltimore, Maryland 21205 // 410-937-1433

2b - FIN - SB 378 - Council on Cancer Control - LO

Uploaded by: Bennardi, Maryland Department of Health /Office of Governmen

Position: FAV



February 11, 2021

The Honorable Delores G. Kelley
Chair, Finance Committees
Miller Senate Office Building, 3 East Wing
11 Bladen St., Annapolis, MD 21401

RE: Senate Bill 378 - Baltimore City - Cigarettes, Other Tobacco Products, and Electronic Smoking Devices - Local Laws Authorization – Letter of Support

Dear Chair Kelley and Committee Members:

The Maryland State Council on Cancer Control supports Senate Bill (SB) 378 which would restore authority to the Baltimore City Council and Mayor to enact and enforce laws regulating the sale of tobacco products. This authority was stripped from Baltimore City and other local jurisdictions as a result of a 2013 court decision, *Altadis U.S.A. v. Prince George's County*, 431 Md. 307 (2013), in which the court held that state law preempts local jurisdictions from enacting laws relating to the sale and distribution of tobacco products.

Local control is integral to reducing tobacco use among youth and adults in Maryland. Local governments typically develop the strongest and most innovative laws tailored to their populations. These local provisions often result in comprehensive state laws. For example, well before the General Assembly passed the comprehensive Clean Indoor Air Act, counties across the State had passed local laws protecting workers and the public from secondhand smoke exposure. Gutting these local public health powers through preemption threatens public health and particularly has deterred local innovation in tobacco control that could have curbed the vape epidemic that we now see among our youth.

The implied preemption comes from the *Altadis* opinion in which the Maryland Court of Appeals found that state legislation passed in 2011 to create a licensing scheme for other tobacco products (OTP; meaning non-cigarette products) preempted a cigar minimum pack size ordinance passed by Prince George's County in 2009. The Court ultimately held the state has occupied the field of regulating the packaging and sale of tobacco products. As a result, Baltimore City has been unable to enforce existing laws (i.e., a restriction on the sale of single cigarettes and another on flavored blunt wraps) and has been unable to pass new legislation regulating tobacco product sales in the City (i.e., banning the sale of menthol cigarettes). The laboratory of innovation has been stymied by the *Altadis* decision and public health has suffered. Opportunities to reduce cancer prevalence through decreasing tobacco use have been removed.

We urge a favorable report on Senate Bill 378 so that Baltimore City can use the plenary public health power that the City holds to address tobacco use in the community, ultimately reducing cancer prevalence.

Sincerely,

Chair,
Maryland State Council on Cancer Control

ACS CAN_SB 378_FAV.pdf

Uploaded by: Collins, Jocelyn

Position: FAV



American Cancer Society
Cancer Action Network
555 11th St., Suite 300
Washington, DC 20004
202.661.5700
www.fightcancer.org

February 11, 2021

TO: The Honorable Delores G. Kelley, Chair
The Honorable Brian J. Feldman, Vice Chair
Members of the Senate Finance Committee
3 East
Miller Senate Office Building
Annapolis, MD 21401

FROM: Jocelyn Collins, Maryland and Washington, D.C. Govt. Relations Director
American Cancer Society Cancer Action Network
555 11th St. NW, Suite 300
Washington, DC 20004
jocelyn.collins@cancer.org
(301) 254-0072 (cell)

SUBJECT: SB 378 Baltimore City—Cigarettes, Other Tobacco Products, and
Electronic Smoking Devices—Local Laws Authorization

POSITION: SUPPORT

Dear Chair Kelley and Members of the Finance Committee:

On behalf of the American Cancer Society Cancer Action Network (ACS CAN) and those we serve, I am writing to express **SUPPORT** of SB 378. ACS CAN advocates for public policies that will help prevent cancer at all levels of government. Local control over matters designed to protect the public's health has numerous benefits that are lost when local power is preempted.

Currently, Maryland courts has adopted, albeit inconsistently, a novel theory of State preemption over local actions – finding that counties may be preempted even without any State law explicitly stating so. This principle has been used for years to invalidate multiple local tobacco regulations, and more recently on local pesticide restrictions and land use decisions for energy facilities. This legislation would clarify, that Baltimore City is able to enact local laws regulating the sale and distribution of cigarettes, other tobacco products, and electronic smoking devices.

Local authority provides for greater accountability because local lawmakers interact with their constituents on a daily basis. Local policymakers can often quickly identify problems in their

community and more easily craft proactive solutions to address the unique needs of their community to make healthier living easier for those who reside, work and play in their community.

Local authority fosters breakthroughs and customized solutions. Local governments are sometimes called the “laboratories of democracy.” This local authority creates an environment where community leaders can pioneer better policies, raising the bar for everyone. This ability to be innovative is especially important when we are still learning what works. Preemptive laws that discourage such breakthroughs in protecting the community’s health, can be especially dangerous in years to come.

The development of public policy at the local level creates community debate, education, and engagement in a way that policymaking at the state or federal level generally does not. This engagement creates a broader base of public understanding and usually leads to more sustainable policies.

Again, ACS CAN works at the local, state and federal levels, so it is important for each of these levels of government to work together to implement policies to protect the public’s health. It’s through working together that we save lives. By removing local policymakers and local policies from the process, preemption will affect the ability to implement protective policies. We ask the committee for a “favorable” report on SB 378.

AHA Supports SB 378 Baltimore City Local Tobacco .

Uploaded by: Hale, Laura

Position: FAV



February 9th, 2021

Testimony of Laura Hale

American Heart Association

Support of SB 378 Baltimore City - Cigarettes, Other Tobacco Products, and Electronic Smoking Devices - Local Laws Authorization

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

Thank you for the opportunity to submit testimony. My name is Laura Hale and I am the Director of Government Relations for the American Heart Association. The American Heart Association offers our support of SB 378.

Localities in Maryland have long been a partner with the state in the fight against big tobacco. We support all localities, including Baltimore City to have the authority to regulate tobacco control (stronger than the state.) Without the local authority to enact and enforce tobacco control laws, Maryland's local governments will not be able to respond to the unique drivers of tobacco use in their jurisdictions. It is estimated that each day 5,000 children under the age of 18 try smoking for the first time, and more than 3,000 children become new regular smokers. Unless smoking rates decline, 5.6 million kids alive today will ultimately die from smoking. To protect Maryland's youth from the dangers of tobacco use, local governments must be able to rectify a recent Court of Appeals decision that calls into question their ability to regulate the sale and distribution of tobacco products at the local level.

In 2013, the Maryland Court of Appeals held that state law preempts local regulation of minimum packaging requirements for cigars, the effect of which has limited our authority to pass and enforce laws regulating the sale and distribution of tobacco products. *Altadis U.S.A., Inc., et al. v. Prince George's County, Maryland*, 431 Md. 307, (2013). The holding turns on the existence of certain provisions in the State Business Regulation Article relating to cigar packaging even though those state provisions were enacted after the local laws in question and even after oral argument in this matter. Unfortunately, this decision contains broad language concerning state preemption of the local authority to enact and enforce laws regulating the sale and distribution of tobacco products. This language has resulted in local jurisdictions being threatened with lawsuits if they continue to enforce and enact and enforce tobacco laws that appropriately address the specific challenges of their community.

Maryland cities and counties need to be able to fight back against big tobacco. This bill allows them to do this. The American Heart Association urges a swift and favorable report on SB 378.

SB378 Testimony - Senator Hayes .docx.pdf

Uploaded by: Hayes, Antonio

Position: FAV

ANTONIO HAYES
Legislative District 40
Baltimore City

Finance Committee



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Antonio.Hayes@senate.state.md.us

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**Testimony of Senator Hayes in Support of Senate Bill 378: Baltimore City - Cigarettes,
Other Tobacco Products, and Electronic Smoking Devices - Local Laws Authorization**

February 11, 2021

Chairman Kelley and Members of the Finance Committee,

The Maryland Department of Health states that 7,500 adults in Maryland die each year due to tobacco-related causes and hundreds of thousands more suffer from tobacco-related diseases. In particular, Baltimore City has one of the highest prevalence of smokers in Maryland. African Americans tend to smoke at a higher rate, leading to greater health disparities in our State. The density of tobacco retailers exacerbates tobacco usage rates; over 1,600 retailers operate in Baltimore City.

Smoking continues to be a leading public health hazard in Baltimore City. To address this hazard, legislation can be enacted and enforced more efficiently at the local level. Senate Bill 378 would enable greater efficiency in addressing smoking hazards by authorizing the Baltimore City Council and the Baltimore City Mayor to enact and enforce laws regulating the sale and distribution of cigarettes and other smoking devices.

Currently, Baltimore City is preempted from legislating in the aforementioned fields due to the Maryland Court of Appeals holding in *Altadis v. Prince George's County*. Other jurisdictions, such as New York and Philadelphia, have passed legislation to prevent a similar situation from arising because it inhibits effective and efficient control of tobacco retailer density, which is directly correlated with usage.

Additionally, this bill would allow Baltimore City to enforce tobacco laws in tandem with the Comptroller's Office. This creates a meaningful opportunity for local government to reduce the burden of broad enforcement that currently falls upon the Comptroller. Furthermore, Senate Bill 378 makes an important exception for the issuance of licenses, ensuring that the Baltimore City Council and Mayor are not authorized to enact and enforce local legislation relating to licensing or the imposition of taxes on cigarettes.

Senate Bill 378 proposes to provide the Baltimore City Council and Mayor with authority proportional to the public health hazard created by current rates of tobacco usage among

Baltimore City residents. In addition to enabling tobacco-related policy and enforcement, the bill has meaningful potential to reduce the broad responsibility of enforcement burdening the Comptroller.

Thus, I urge a favorable report on Senate Bill 378.

Respectfully,



Senator Antonio L. Hayes
40th Legislative District - MD

SB0378_FAV_MedChi, MDAAP_Balt. City - Cigarettes,

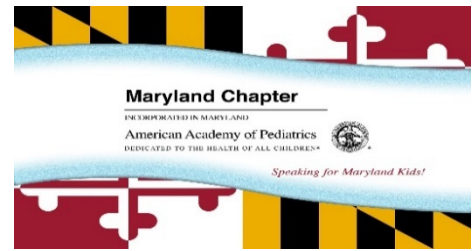
Uploaded by: Kasemeyer, Pam

Position: FAV

MedChi

The Maryland State Medical Society

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TO: The Honorable Delores G. Kelley, Chair
Members, Senate Finance Committee
The Honorable Antonio Hayes

FROM: Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman

DATE: February 11, 2021

RE: **SUPPORT** – Senate Bill 378 – *Baltimore City – Cigarettes, Other Tobacco Products, and Electronic Smoking Devices – Local Laws Authorization*

On behalf of the Maryland State Medical Society and the Maryland Chapter of the American Academy of Pediatrics, we submit this letter of **support** Senate Bill 378.

Senate Bill 378 authorizes the City of Baltimore to enact and enforce local laws regulating the sale, distribution, and packaging of tobacco and tobacco-related products. Local control over matters designed to protect the public's health have numerous benefits that are lost when local power is preempted. Local authority provides for greater accountability and a more responsive and proactive approach to addressing needs of their community. The development of public policy at the local level also creates community engagement and a broader base of public understanding and investment in the intended objectives.

The City of Baltimore faces a public health crisis fueled by the availability of tobacco products and the prevalence of tobacco use. Passage of Senate Bill 378 will enable Baltimore City to do more at the local level in coordination and consistence with the authority granted by state law to curb these alarming trends and improve the health of its residents. A favorable report is requested.

For more information call:

Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
410-244-7000

CTFK Written testimonySB 378 2-11-21.pdf

Uploaded by: Kissell, Meghan

Position: FAV



Written Testimony in support of SB 378 to the Senate Finance Committee

February 11, 2021

Submitted by Meghan Kissell, Regional Advocacy Director, Campaign for Tobacco-Free Kids

The Campaign for Tobacco-Free Kids submits these written comments in support in support of SB 378: Baltimore City - Cigarettes, Other Tobacco Products, and Electronic Smoking Devices - Local Laws Authorization. The Campaign for Tobacco-Free Kids is the nation's largest non-profit, non-governmental advocacy organization solely devoted to reducing tobacco use and its deadly toll by advocating for public policies that prevent kids from using tobacco, help smokers quit and protect everyone from secondhand smoke.

Even though Maryland has made great strides in reducing tobacco use, tobacco use remains the number one preventable cause of premature death and disease in Maryland and the nation, killing over 7,500 residents every year.¹ The scientific evidence shows that the most effective way to reduce tobacco use is through a comprehensive approach. This includes promoting and funding cessation programs, removing flavored tobacco products that lure kids to a deadly addiction, and by giving local jurisdictions the tools necessary to enact and enforce tobacco control policies that make sense for their community.

The strongest, most innovative and effective tobacco control policies have most often originated at the local level, yet state preemption prohibits communities like Baltimore City, from enacting and enforcing laws that are responsive to the community. With more than 1,300 retail establishments licensed to sell tobacco products, Baltimore City has the largest number of licensed cigarette retailers of any jurisdiction in the State of Maryland.² Baltimore has 63 times more tobacco retailers than McDonald's restaurants.³ Accordingly, it is no coincidence that the prevalence of tobacco usage in Baltimore City is one of the highest in the state,⁴ and likewise, Baltimore City has some of the highest rates of morbidity and mortality associated with tobacco use.⁵

¹ National: U.S. Department of Health and Human Services (HHS), "The Health Consequences of Smoking – 50 Years of Progress A Report of the Surgeon General 2014. State: Centers for Disease Control and Prevention (CDC), *Best Practices for Comprehensive Tobacco Control Programs—2014*, http://www.cdc.gov/tobacco/stateandcommunity/best_practices/.

² Baltimore City Health Department. 2017 Community Health Assessment, September 2017

³ Tobacco Retailer Density Fact Sheet for Baltimore, MD (May, 2020), Advancing Science & Practice in the Retail Environment (ASPIRE, aspirecenter.org), funded by the National Cancer Institute #P01-CA225597.

⁴ Maryland Department of Health. Monitoring Changing Tobacco Use Behaviors: 2000-2016. Baltimore: Maryland Department of Health, Prevention and Health Promotion Administration, Cancer and Chronic Disease Bureau, Center for Tobacco Prevention and Control, May 2018.

⁵ *Id.*

While the city has made great strides in reducing youth smoking, state preemption has created a bifurcated system of enforcement of laws between the Baltimore City Health Department (BCHD) and the State Comptroller's office. This legislation would clarify that Baltimore City is able to enact local laws regulating the sale and distribution of cigarettes, other tobacco products, and electronic smoking devices. It would allow the city to explore evidence-based tobacco control measures such as having penalties for failing to display legally required signage, penalties for avoiding cigarette taxes, and the possibility of shuttering a retailer for repeat violations of certain tobacco laws.

When the state prevents communities from passing their own laws, they silence the voice of the people, and hurt the communities' health, safety, and economic wellbeing. Our state tobacco control laws should be seen as a floor, not a ceiling, for how to respond to the preventable health crisis in Baltimore. For these reasons, we respectfully request a favorable report on SB 378.

LOCAL Maryland testimony for SB378.pdf

Uploaded by: McIntosh, Shawn

Position: FAV



TO: Chair Delores Kelley and Members of the Finance Committee
FROM: Shawn McIntosh, Executive Director, Sugar Free Kids Maryland
Representing LOCAL Maryland
DATE: February 11, 2021
RE: SB 378 - Baltimore City – Cigarettes, Other Tobacco Products, and Electronic Smoking
Devices – Local Laws Authorization
POSITION: **Support**

I am writing as the lead representative of LOCAL (Let Our Communities Act Locally) Maryland, a statewide coalition of community, labor, faith and business organizations, committed to protecting the ability of local elected officials to pass laws that support healthy families, a clean environment and good jobs for the people of our state. Because our membership includes organizations from multiple sectors, ranging from the American Heart Association to the Public Justice Center, not every organization has a position on tobacco regulations. Our stance as a coalition is not based on the merits of various tobacco laws, but instead on a philosophy that the state law should be setting a universal floor and that local jurisdictions should have the ability to exceed it. LOCAL Maryland also believes that cities and counties should be able to introduce legislation that is intended to improve the health and quality of life of their residents without the threat of an implied preemption court challenge.

LOCAL Maryland recognizes that one size will not always fit all when it comes to our state laws. Maryland's cities and counties are extremely diverse. All localities should have the ability to pass laws that support healthy families, a clean environment and good jobs for people in the community. Baltimore City is certainly no exception, and they should have the ability to pass policies that can address their specific tobacco-related problems.

However, in 2008, several local jurisdictions including Baltimore City attempted several policy change strategies designed to curb tobacco usage rates, including a series of regulations concerning tobacco packaging, which then was challenged in the Maryland Court of Appeals.¹ Citing existing Maryland statutes, the Court held that the state had intended to fully occupy the field of regulating the sale, distribution, and packaging of tobacco and tobacco-related products, resulting in implied preemption.²

The Court of Appeals decision invalidated two significant city health codes that had long lasting, negative impacts on their ability to fully enforce tobacco laws in a manner that would be most beneficial to public health.

Senate Bill 378 would enable Baltimore City to more effectively enforce existing tobacco laws and introduce more effective policies for tobacco regulation to reduce smoking. Maryland has passed a number of successful policies to regulate the sale and distribution of tobacco products. Those laws should be setting the floor for cities and counties. All localities should have the ability to exceed the Maryland standards.

The tobacco and retail industries may argue that having a patchwork of regulations is too difficult to manage. However, they are already managing a patchwork of regulations nationally, regionally and within the state. It's a false narrative. LOCAL Maryland urges you to pass Senate Bill 378.

¹ *Altadis U.S.A., Inc., et al. v. Prince George's County, Maryland*, 431 Md. 307 (2013)

² *Ibid.*

SB378.SenateFinance.2.11.21.pdf

Uploaded by: Torton, Brooke

Position: FAV

Testimony in Support of Senate Bill 378

My name is Brooke Torton and I am the Deputy Director of the Legal Resource Center for Public Health Policy at the University of Maryland Carey School of Law. This testimony is submitted to provide background information relevant to Senate Bill 378.

SB378 would restore authority to the Baltimore City Council and Mayor, respectively, to enact and enforce laws regulating the sale of tobacco products. This authority was stripped from Baltimore City and other local jurisdictions as a result of a faulty 2013 court decision, *Altadis U.S.A. v. Prince George's County*, 431 Md. 307 (2013). In that case, the court held that merely by passing a law requiring cigar sellers to be licensed, the General Assembly impliedly preempted local jurisdictions from enacting laws relating to the sale and distribution of tobacco products.

Preemption is the constitutional doctrine that federal law is supreme over and in some circumstances will displace, state or local law. Likewise, state law can invalidate a local law in certain instances as well. There are two types of preemption, express and implied. A federal or state statute may explicitly prohibit local regulation; that is express preemption. Preemption may also be implied either by conflict (if the local law interferes with the objectives of a state or federal law) or field preemption (when state or federal government has heavily regulated a particular field, suggesting an intent to occupy the entire subject area). Local control is integral to addressing youth access and retailer restrictions. Local governments typically develop the strongest and most innovative laws tailored to their populations.

The *Altadis*¹ case concerned a 2008 Prince George's County ordinance requiring cigars to be sold in packages of at least five. The Maryland Court of Appeals ultimately held the state has occupied the field of regulating the packaging and sale of tobacco products. In reaching its decision, the Court focused extensively on the other tobacco product (OTP) licensing provisions which passed in 2011, *subsequent* to the oral argument which took place in this case. The Court stated that the licensing provisions define the term "package" as not more than 10 cigars, which is at odds with the Prince George's County ordinance which defined a "package" as minimum of 5 cigars. However, this analysis is flawed because a minimum of 5 cigars is certainly consistent, not at odds with, not more than 10.

Additionally, my office provided extensive technical assistance on these licensing provisions and worked closely with the Comptroller's Office (which drafted and had the legislation introduced), advocates, opponents, and legislators. Never was there discussion about this licensing scheme, designed to mirror licensing for cigarette sellers, preempting local law. The public health community certainly would have opposed the bill if there was any belief that the result would be preemption of local tobacco regulation. In fact, the *Altadis* case was pending decision during the 2011 session and the public health community, including local health officers, weighed in in

¹ *Altadis U.S.A. v. Prince George's County*, 431 Md. 307 (2013).

favor of Prince George's County and local control in that case. It is nonsensical that a bill the public health community supported would end up curtailing local powers.

Regardless of whether the Court of Appeals properly found implied preemption, Baltimore City and county governments across the State are hamstrung by the *Altadis* decision and only the General Assembly can remedy that. As a result of *Altadis*, since 2013 Baltimore City has been unable to enforce tobacco regulation that preexisted the decision and has been unable to pass additional regulations to address new and persistent issues related to tobacco use. This bill seeks to rightfully return this authority to Baltimore City.

SB 378 - Premium Cigar - Oppose.pdf

Uploaded by: Bohle, Matthew

Position: UNF



Aphelion Cigar Lounge 410-721-1700
2510 Conway Road, Ste. 106, Gambrills 21054

Broadleaf Tobacco 410-315-8118
487 Ritchie Highway, #101, Severna Park 21146

Burnt Leaf 443-272-7206
487 Ritchie Highway, #101, Severna Park 21146

Cross Street Tobacco 410-752-9220
1103 Light Street, Baltimore 21230

Dan's Cigar Lounge 410-780-5959
8300-B Pulaski Highway, Rosedale 21237

Davidus Cigars. 301-865-1000
2134 Generals Highway, Annapolis 21401
1300 Bank Street, Baltimore 21231
1716 Liberty Road, Eldersburg 21784
9180 Baltimore National Pike, Ellicott City 21042 529
West South Street, Frederick 21701
25 Olney Sandy-Spring Road, Ashton 20861
10810 Reisterstown Road, Owings Mills 21117
11632 Rockville Pike, Rockville 20852
15922 Shady Grove Road, Gaithersburg 20832 8925
Fingerboard Road, Urbana 21704
23 East Main Street, Westminster 21157 25
Allegheny Avenue, Towson 21204

Easton Cigar & Smokeshop 410-770-5084
6 Glenwood Ave, Easton 21601

Etch-Art Awards 410-202-6616
931 Mount Hermon Road, Salisbury 21804

Fire & Smoke Cigar Parlor 443-970-6634
6827 Loch Raven Blvd., Towson 21286

Leonardtwn Cigar 240-309-4108
40955 Merchants Lane #14, Leonardtown 20650

Main Street Cigar Company 410-734-4494
2217 E. Churchville Road, Bel Air 21015

Mount Vernon Tobacco 410-728-5669
221 W. Read Street, Baltimore 21201

Mt. Washington Cigar Co. 410-377-4711
5909 Falls Road, Baltimore 21209

Oakleigh Beach Tobacco 410-388-8080
702 Wise Avenue, Dundalk 21222

Office Cigar Lounge at QG 410-685-7428
31 S Calvert St, Ste 300, Baltimore 21202

Quartermasters Cigars 410-898-2134
880 Northeast St, Frederick 21701

Senor Cigars 410-524-2069
11805 Coastal Highway, Ocean City 21842
3314 Coastal Highway, Ocean City 21842

Signature Cigars 301-424-8833
1331 Rockville Pike, Rockville 20852
4919 Cordell Avenue, Bethesda 20814

Spartan Cigar Lounge 443-350-9808
128 East Pulaski Highway, Elkton 21921

The Book Center 301-722-8345
15 North Centre Street, Cumberland 21502

The Humidour Cigar Shoppe 410-666-3212
2 Sherwood Road, Cockeysville 21030

TinderBox #398 301-374-9100
2754 Crain Highway, Waldorf 20601

Titan Cigar 410-721-2944
2634 Chapel Lake Drive, Gambrills 21056

Tobacco Leaf 410-799-2094
7351 Assateague Drive, Jessup 20794

W. Curtis Draper Tobacconist 301-907-7990
4916 Del Ray Avenue, Bethesda 20814

February 11, 2021

Opposition for Senate Bill 378

Madame Chair and members of the Committee,

The Premium Cigar Retailers Association of Maryland represents over 30 adult only brick and mortar premium cigar specialty stores in the State. Members of the PCRA have appeared before your committee on several matters this session and we thank you for the opportunity to testify again.

We write today in opposition to Senate Bill 378.

The Maryland General Assembly last year took the position that tobacco regulation and taxation should remain exclusively a matter within the State's purview. We support that position, as it maintains a consistent statewide regulatory approach.

Enabling one jurisdiction to enact their own set of rules and regulations will lead to inconsistencies and redundancies in enforcement and will make compliance more difficult, costly and burdensome. We oppose a patchwork approach by local jurisdictions on these matters.

Additionally, during the COVID-19 Pandemic, we have seen how difficult it is for business owners to comply with a patchwork of closures by localities. Overlapping jurisdiction creates confusion and consternation among businesses, customers and regulators.

For these reasons we respectfully ask for an unfavorable report on SB 378.

Sincerely

Matthew Bohle, Patrick Roddy and Obie Chinemere of RWL – 410-269-5066

SB 410 and SB378.pdf

Uploaded by: McCauley, Kirk

Position: UNF



WMDA/CAR Service Station and Automotive Repair Association

February 9, 2021

Chairman: Delores G. Kelley
Members of Senate Finance Committee

RE: SB 410 – SB 378
Position: In Opposition

I believe city and county health departments have the authority now to enforce tobacco and ESD laws but will leave that to the attorneys on committee.

Allowing a county or municipality to enact tobacco and ESD regulation would create unbelievably confusion. Retailers with multiple location in different jurisdictions, Enforcement officers , customers and employees that work at more than one location would all be affected.

Let us make enforcement and compliance easier for all, by not creating disorientation to what city or county you are in.

Please give SB410 and SB378 an unfavorable Report

WMDA/CAR is a trade association that has represented service stations, convenience stores and independent repair shops since 1937. Any questions can be addressed to Kirk McCauley, 301-775-0221 or kmccauley@wmda.net

Testimony SB378 and SB410 2021 signed.pdf

Uploaded by: Parsons Jr, Fred

Position: UNF



February 9, 2021

To; Chair Senator Kelley and committee,

Regarding SB378 and SB410

We are against these bills.

Cigarettes, Tobacco, and Electronic smoking devices are already regulated by the state. If we create separate laws for each jurisdiction this creates confusion at retail and amongst the consumers. This can cause conflicts within the retail locations because a customer may be able to buy something in Anne Arundel County, but 1 block away, not be able to get the item because they are in Baltimore City.

Fred L. Parsons Jr.

A handwritten signature in black ink, appearing to read "Fred L. Parsons Jr.", written in a cursive style.

The George J. Falter Co.

RonWardMDSB378writtentestimoy021121.pdf

Uploaded by: Ward, Ronald

Position: UNF

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Written Testimony

To: Maryland Senate Finance Committee
From: Ronald A. Ward Jr., Esq.
Date: February 11, 2021
Re: Maryland Senate Bill 378

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 a Vape Shop in Baltimore County, MD for the past 7 years.

Senate Bill 378 (page 2, lines 7 to 12) allows Baltimore City to enact additional and more stringent taxes and regulations on Electronic Smoking Devices (ESDs) in addition to the already stringent State and Federal laws pertaining to these products.

The Food and Drug Administration (FDA), as well as, the State of Maryland, are 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 State and Federal agencies in this matter. The Baltimore City government is under-funded and does not possess the knowledge of the ESD industry or capacity to make fair and equitable decisions pertaining to the regulation and taxation of the ESD industry in Baltimore City. The Baltimore City Council and Mayor of Baltimore City are not industry professionals or public health experts. We must also consider whether the recent State and Federal laws and regulations are effective before we take these drastic measures that will place additional burdens on this industry in an attempt to basically tax and regulate these products off the market in Baltimore City.

This Bill is virtually identical (one is Baltimore City specific while the other is State-wide) to Senate Bill 410 sponsored by Montgomery County-based Senator Kramer who has been pursuing anti-ESD legislation in Maryland for almost a decade. Furthermore, Montgomery County is almost devoid of Vape Shops due to the 30% of wholesale tax on ESDs, amongst other draconian measures, passed and/or contemplated by the Montgomery County Council. Instead of raising tax revenue for Montgomery County, the tax had the opposite effect.

Now, Senator Hayes is attempting to give Baltimore City the ability to further tax and regulate ESDs in addition to the existing taxes and regulations being set forth by the Federal and State governments. If the Baltimore City government was given this power, it could completely destroy the vaping industry in Baltimore City. Mayor Scott and the Baltimore City Council are already contemplating a 40% of wholesale cost tax on ESDs which would inevitably have the same devastating effect on the ESD industry in Baltimore City as it did in Montgomery County.

Vaping gives adult smokers the ability to cease their deadly habit of smoking cigarettes by switching to a more viable alternative to smoking. This would be against the interest of public health for the citizens of Baltimore City.

And, for the record, my business is situated in Baltimore County within about a mile of Baltimore City. Therefore, I am arguing against this Bill although it would most likely benefit my business. This proposed legislation is unfair to the businesses and adult ESD users in Baltimore City. As a 20 plus year resident of Baltimore City, I cannot remain silent on this issue.

V. Conclusion

I recommend that the Senate Finance Committee issue an unfavorable report for Senate Bill 378. 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.