



March 2, 2022

TO: The Honorable C.T. Wilson, Chair
The Honorable Brian Crosby, Vice-Chair
Members of the House Economic Matters Committee
House Office Building
6 Bladen St., Room 231
Annapolis, MD 21401

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SUBJECT: HB 1341 (PG 306-22) Prince George's County – Other Tobacco Products and Electronic Smoking Devices Requirements and Limitations

Position: **OPPOSE**

We thank you for the opportunity to provide public comments on HB 1341 (PG 306-22). As drafted, the American Cancer Society Cancer Action Network (ACS CAN), American Heart Association (AHA), and American Lung Association (ALA) **OPPOSES** the legislation for the following reasons:

- Prince George's County already has the authority to restrict the location of retail tobacco distribution via local zoning ordinances. By including language relating to zoning authority in the bill, Prince George's County questions its own authority. This would lend support to future opponents who oppose local zoning ordinances or decisions and question the county's zoning power related to any zoning, not solely tobacco-related retailers.
- In 2020, Montgomery County passed an ordinance restricting electronic smoking device (ESD) manufacturers from distributing these products within .5 miles of any middle or high school. By questioning its own authority in Prince George's County, it could call into question the zoning authority in other jurisdictions, like Montgomery. Both charter and code



counties get their authority to “enact local laws relating to zoning” via the Express Powers Act, in the Local Government Article, 10-324.

<https://apps.montgomerycountymd.gov/ccllms/BillDetailsPage?RecordId=2625&fullTextSearch=tobacco>

- The bill as written does not accomplish what it sets out to do. It targets only other tobacco product (OTP) and ESD licensing. However, retailers who sell cigarettes and or other tobacco products, do not need an additional license to sell ESDs— as long as they have either the other tobacco license or cigarette license. Therefore, this bill wouldn’t cover all the licensees in the State who sell ESD products.
- The bill as written possibly challenges the authority of the Maryland Alcohol Tobacco Commission (ATC). There needs to be consultation with ATC on this. Furthermore, the ATC has significant authority over enforcement and licensure, and has been engaged with many powers. Please see portions of the code: Business Regulation Title 16, 16.5, and 16.7.

As noted in our prior letter dated February 7, 2022 to the Prince George’s County House Delegation, if Prince George’s County wants to tackle the intent of the bill to overturn tobacco preemption and tackle the oversaturation of tobacco retailers, then the Delegation should support ***HB 477/SB 99 Cigarettes, Tobacco Products, and Electronic Smoking Devices—Local Authorization*** sponsored by Prince George’s Del. Diana Fennell (D-47A) and Sen. Ben Kramer (D-19) have statewide legislation again this Session – which mirrors the intent of HB 1341 (PG 306-22). Our organizations support this legislation.

Or we recommend amending the legislation in its entirety to match ***HB 442/SB 249 Baltimore City – Cigarettes, Other Tobacco Products, and Electronic Smoking Devices – Local Laws Authorization*** – which properly addresses the primary intent of this legislation. The language for the amendment can be found below:

Prince George’s County Delegation Bill No. HB 1341 (PG 306-22)

AMENDMENTS TO PRINCE GEORGE’S COUNTY DELEGATION BILL 306-22

AMENDMENT NO. 1

On page 1, strike lines 2 and 3 and substitute **“Prince George’s County – Cigarettes, Other Tobacco Products, and Electronic Smoking Devices – Local Laws Authorization”**

AMENDMENT NO. 2

On page 1, strike in their entirety lines 4 through line 9 and substitute:

“FOR the purpose of authorizing Prince George’s County to enact and enforce local laws regulating the sale and distribution of cigarettes, other tobacco products, and electronic smoking devices, subject to certain exceptions; and generally relating to the regulation of cigarettes, other tobacco products, and electronic smoking devices in Prince George’s County.”

AMENDMENT NO. 3



American
Heart
Association.



On page 1, strike in their entirety lines 10 through 19, inclusive, and substitute:

“BY adding to
Article – Business Regulation
Section 16–308.4, 16.5–104, and 16.7–103
Annotated Code of Maryland
(2015 Replacement Volume and 2021 Supplement)”

AMENDMENT NO. 4

On page 2, strike in their entirety lines 4 through line 21 on page 8, inclusive, and substitute:

“16–308.4.

EXCEPT FOR THE ISSUANCE OF LICENSES UNDER THIS TITLE OR THE IMPOSITION OF TAXES ON CIGARETTES UNDER TITLE 12 OF THE TAX – GENERAL ARTICLE, THE PRINCE GEORGE’S COUNTY COUNCIL MAY ENACT AND THE COUNTY EXECUTIVE OF PRINCE GEORGE’S COUNTY MAY ENFORCE LOCAL LAWS THAT ARE AT LEAST AS STRINGENT AS THE PROVISIONS OF THIS TITLE THAT REGULATE THE SALE AND DISTRIBUTION OF CIGARETTES.

16.5–104.

EXCEPT FOR THE ISSUANCE OF LICENSES UNDER THIS TITLE OR THE IMPOSITION OF TAXES ON OTHER TOBACCO PRODUCTS UNDER TITLE 12 OF THE TAX – GENERAL ARTICLE, THE PRINCE GEORGE’S COUNTY COUNCIL MAY ENACT AND THE COUNTY EXECUTIVE OF PRINCE GEORGE’S COUNTY MAY ENFORCE LOCAL LAWS THAT ARE AT LEAST AS STRINGENT AS THE PROVISIONS OF THIS TITLE THAT REGULATE THE SALE AND DISTRIBUTION OF OTHER TOBACCO PRODUCTS.

16.7–103.

EXCEPT FOR THE ISSUANCE OF LICENSES UNDER THIS TITLE, THE PRINCE GEORGE’S COUNTY COUNCIL MAY ENACT AND THE COUNTY EXECUTIVE OF PRINCE GEORGE’S COUNTY MAY ENFORCE LOCAL LAWS THAT ARE AT LEAST AS STRINGENT AS THE PROVISIONS OF THIS TITLE THAT REGULATE THE SALE AND DISTRIBUTION OF ELECTRONIC SMOKING DEVICES.”

The Delegation could also ask for Prince George’s County to be amended into **HB 442/SB 249**.

Additionally, we have suggested to Prince George’s County, that if they want to tackle limiting tobacco retailer licensure and density, we recommended setting up a work group to address this issue and to make recommendations on policy language on the State level. We have provided this draft bill language to Prince George’s County, as well.

Finally, we suggested and provided bill language to Prince George’s County to tackle “bad actors” and address their tobacco licenses (as these bad actors continue to have licenses and new stores are popping up in the County). We suggested the County to put in a bill that would require the Alcohol and Tobacco Commission to give the County Clerk’s office a list of those retailers whose licenses have been



revoked. If the licenses were revoked, the legislation would call for the retailer to not to be allowed a license. We believe this would be an effective way to address the problem.

As we have historically partnered with Prince George's County, we look forward to renewed efforts to effectively address tobacco control in Prince George's County in the future. Again, we **OPPOSE HB 1341 (PG 306-22)**.