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SB 0099

January 27, 2022

TO: Members of the Senate Finance Committee

FROM: Natasha Mehu, Director of Government Relations

RE: Senate Bill 0099 – Cigarettes, Tobacco Products, and Electronic Smoking Devices - Local Law Authorization

POSITION: Support

Chair Kelley, Vice Chair Feldman, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **supports** Senate (SB) 0099.

SB 0099 authorizes a county or municipality, including the City of Baltimore, to enact and enforce local laws regulating the sale, distribution, and packaging of tobacco and tobacco-related products. With more than 1,600 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.ⁱ Accordingly, it is no coincidence that the prevalence of tobacco usage in Baltimore City is one of the highest in the state,ⁱⁱ and likewise, Baltimore City has some of the highest rates of morbidity and mortality associated with tobacco use.ⁱⁱⁱ

In 2008, several local jurisdictions including the City of Baltimore worked diligently to curb tobacco usage rates using the legislative tools at their disposal. That year, the BCA, along with Prince George's County, enacted a series of regulations concerning tobacco wrappers, which then came under scrutiny by the Court of Appeals.^{iv} Citing existing Maryland statutes, the Court of Appeals 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 of all local laws throughout¹ political subdivisions throughout the state.^v

The Court of Appeals decision had far-ranging impacts on the City of Baltimore. Two provisions of the City's Health Code were invalidated, including Title 12, Subtitle 2 (Sale of Unpackaged Cigarettes) and Subtitle 6 (Flavored Tobacco Wrappings). Moreover, in 2015, the BCA created a local option for citizens to call 311 to report businesses that are selling tobacco to underage youth, a behavior currently banned by state law and delegated to local jurisdictions for enforcement. While receiving

several 311 requests to investigate tobacco sales to minors, the BCA also receives calls concerning illegal tax stamps and the sales of unpackaged cigarettes. The Baltimore City Health Department (BCHD)'s Tobacco Enforcement Officers diligently investigate each complaint and are only able to address issues concerning sales to minors due to the aforementioned *Altadis* decision. All other calls were referred to the State Comptroller's office for enforcement. Due to the uneven and bifurcated enforcement regime created by the *Altadis* decision, many of these cases remain unresolved due to the resultant inconsistent jurisdiction.

The BCA believes that by allowing the City to both enact and enforce tobacco laws analogous to those already in place on the state level, many of the above-mentioned complaints will decrease. Furthermore, the BCA would be able to address certain public safety issues surrounding the sale of tobacco products. In many of our documented cases, complaints regarding tobacco retailers also involve violence and criminal activity. The BCA welcomes the ability to coordinate with other local and state agencies, as would be authorized with the enactment of SB 0099, to better address these situations as they arise and ease the concerns of our residents, creating a healthier, more vibrant city.

Assuming local authority under SB 0099 is granted, the BCA will move to adopt the proven practices that have shown positive results in other jurisdictions. For example, in 2014, New York City—a leader in municipal tobacco control in the United States—greatly furthered its goal of reducing the prevalence of tobacco use by enacting groundbreaking laws like “Sensible Tobacco Enforcement.”^{vi} The “Sensible Tobacco Enforcement” law established additional enforcement authority with clear requirements for tobacco retailers. It included 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.^{vii} These enforcement efforts were coordinated by three New York City agencies, with ultimate responsibility resting with the New York City's Department of Health to issue citations. To date, fewer and fewer violations have been issued because New York City's comprehensive cross-agency approach has bolstered compliance.^{viii}

Altogether, there is a public health crisis in the City of Baltimore fueled by the availability of tobacco products and the prevalence of tobacco use. Accordingly, the BCA is requesting the ability to do more at the local level in coordination and consistent with the authority granted by state law to curb these alarming trends and improve the health of its residents.

We respectfully request a **favorable** report on Senate Bill 0099.

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

ⁱⁱ 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.

ⁱⁱⁱ Ibid.

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

^v Ibid.

^{vi} Moorelan-Russel, Sarah, et al, “Success in the city: the road to implementation of Tobacco 21 and Sensible Tobacco Enforcement in New York City.” 2016

^{vii} Repeat violations could include the sale of cigarettes or other tobacco related products to patrons under the age of 21; evasion of New York City cigarette or other tobacco product taxes; sale of loose cigarettes or little cigars; allowing an employee younger than 18 years old to sell, dispense or handle tobacco products without supervision by a store owner or employee who is at least 18 years old; sale of flavored tobacco products; and sale of tobacco and non-tobacco smoking products to a minor. Ibid.

^{viii} Ibid.