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February 16, 2023

TO: The Honorable Melony Griffith
Chair, Finance Committee

FROM: John Leovy
Chief Counsel, Tobacco Enforcement Unit, Office of the Attorney General

RE: SB 0258 – Business Regulation – Flavored Tobacco Products – Prohibition
(Support with Amendment)

The Office of the Attorney General encourages the Finance Committee to issue a favorable report with amendment on Senate Bill 259, sponsored by Sen. Clarence Lam.

Senate Bill 259 would prohibit the manufacture, shipment, importation or sale of flavored tobacco products in Maryland by authorized licensees. The bill achieves this goal by stating that the manufacture, shipment, importation, or sale of flavored tobacco products is not an authorized action under the terms of the license, and such unauthorized use is a misdemeanor violation subject to a fine of up to \$1000, 30 days imprisonment, or both.

The ban on flavored tobacco products would apply to cigarettes, other tobacco products (“OTP”), and electronic smoking devices (“ESD”). Flavored tobacco products have been proven to be more attractive to youth consumers and may be more difficult to quit. Nearly all adult consumers of tobacco products began using tobacco products before the age of 18. A ban on the sale of flavored tobacco products would be beneficial to the public health by preventing the sale of products that are attractive to youth. Any decrease in revenue from tobacco taxes resulting from decreased consumption is likely to be offset in future years because of reduced spending on health care for tobacco-related diseases.

Notably, the bill would not criminalize the possession or use of tobacco products by consumers, and thus should not result in unintended enforcement actions against youth or other consumers. The enforcement mechanism is targeted solely at cigarette, OTP, and ESD license holders. While there may be a spike in violations of this provision upon enactment, it is

This bill letter is a statement of the Office of Attorney General’s policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us.

expected that after a certain amount of time, Maryland retailers and wholesalers would fully adjust to the new requirements, as these businesses are likely to comply due to the desire to continue to operate and sell legal tobacco products.

We recommend amendments to alter the definition of “Tobacco Product” which occurs at three spots in the bill. At Bus. Reg. §§16-101(h)(3), 16.5-101(u)(3), and 16.7-101(L)(3), the bill states that “‘Tobacco Product’ Does not include a drug, device, or combination product authorized for sale by the U.S. Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act.” We believe that this carveout was intended to protect products approved by the FDA as an authorized tobacco cessation product. However, as written, the carveout could be interpreted to cover *any* product that has been authorized for sale by the FDA under one of several pathways created by the Family Smoking Prevention and Tobacco Control Act of 2009. These pathways are intended for general approval of new and traditional tobacco products. Such approval does not suggest that the authorized products have any mitigated health risks or cessation properties, and therefore they would not be the sort of products intended to be captured in the carveout.

Therefore, we recommend the inclusion of the phrase “as an authorized tobacco cessation product” be inserted into the text of the bill before the period in each of the three provisions identified above. Further, the quoted language is currently also in Bus. Reg. §16-3A-01(c)(3) and similar language creates a carveout from the definition of Electronic Smoking Device in Bus. Reg. §16.7-101(c)(3). To maintain consistency, we recommend inserting the phrase “as an authorized tobacco cessation product” in those two sections as well.

The Office of the Attorney General recommends a favorable report of Senate Bill 259 with those modest amendments.

cc: Members of the Committee