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**Written Testimony**

**To:** Maryland Senate Finance Committee  
**From:** Ronald A. Ward Jr., Esq.  
**Date:** February 16, 2023  
**Re:** Maryland Senate Bill 259

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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 an electronic cigarette shop in Baltimore County, MD for more than 9 years.

Senate Bill 259, as written, shows a lack of knowledge of the products it intends to regulate, namely Electronic Smoking Devices (hereinafter "ESDs") and contains a highly subjective, overly broad definition of "Flavored Tobacco Product". Most importantly, it attaches criminal penalties to an extremely vague and subjective definition. Also, SB 259 is an emergency bill that would leave thousands of Maryland businesses under the weight of crippling amounts of unsellable inventory and would leave them with virtually no inventory that would be legal to sell. Additionally, this regulation is an inappropriate and unfeasible approach to flavored tobacco products, particularly vaping products. For these reasons, SB 259 will enact a vague product standard that will complicate compliance for retailers and will be inevitably ripe for unfair enforcement standards. As a possibly unintended consequence of its language, it will only allow for unflavored ESD liquid which will destroy the grassroots, mom and pop vaping industry in Maryland. SB 259 will also force former smokers back to the big tobacco companies or the black market.

I respectfully urge this Committee to issue an unfavorable report for Senate Bill 259, or, in the alternative, create an exemption for licensed retailers or, more narrowly, an exemption for ESD liquids as they are currently active in the Food and Drug Administration's Pre-Market Tobacco Application (hereinafter "PMTA") process and have and are currently expending vast amounts of time and money researching, testing and applying for approval of their various flavored ESD liquids.

## II. Proposed Legislation

Proponents of this Bill have been attempting to advance this extremely flawed legislation in 2020 and in 2021, without any noticeable edits in needed to possibly create a reasonable piece of legislation. There are sections of this bill that would allow for prohibited activity because its language is dated, unedited and misinformed. Nonetheless, it is my opinion that no edit would make SB 259 an acceptable piece of legislation.

It should be noted that, for over a decade, our industry has been under attack at the federal and state level and falsely blamed for people dying from using nicotine vapor products. Opponents of ESDs have even made the ridiculous claim, despite strong scientific evidence to the contrary (will provide additional information upon request), that ESDs are as harmful as smoking tobacco. Due to this misinformation campaign, the sales of our family business have significantly declined while we struggle to help former smokers and survive this COVID pandemic and crippling recession. We must also charge our customers a sales and use tax at the rate of 12%.

Different people have different senses of taste and smell. The smell of the liquid itself, the flavor of the vapor and the exhaled vapor most definitely smell like different things to different people. I have not vaped a single tobacco flavor with an exhaled aroma of tobacco. Unlike tobacco smoke, the taste and smell of vaped flavors are not obvious.

The definition of “Flavored Tobacco Product,” on Page 2, lines 13 to 20, and elsewhere in the bill, would, by its language, constitute a prohibition of ALL flavored ESD liquid, including tobacco flavors. More importantly, the definition is highly vague in that it is defined as “a taste or smell, other than that of tobacco, that is distinguishable by an ordinary consumer either before or during the consumption process”. This definition is repeated multiple times in SB 259 without a definition of the senses of taste and smell of the “ordinary consumer” or a definition of the “ordinary consumer”. Most egregiously, on page 13, lines 19-21, SB 259 imposes criminal penalties against anyone who sells any flavored tobacco product with each day constituting a separate offense.

The Bill goes even further on page 18, line 16 to page 19, line 2 where it creates the presumption that a tobacco product is flavored based simply upon a public statement that the flavor produces a taste or smell other than tobacco. Cigarettes contain flavors other than tobacco without publicly disclosing the fact, whereas, U.S. ESD liquid companies have always been transparent and detailed with the descriptions of their products. Note that no ESD liquid product currently on the market can claim a one-to-one flavor or aromatic experience with combustible tobacco. Much like cigarettes, ALL tobacco flavored ESD liquids have other flavors (including mint and menthol) added to the harsh and unpalatable untreated “tobacco leaf” flavor. Senate Bill 259 would prohibit ALL flavored ESD liquids, including tobacco-based flavors. The language of this bill would leave only completely unflavored ESD liquid on the market in Maryland.



Additionally, The Food and Drug Administration (FDA) is 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 FDA in this matter. As stated previously, American companies producing ESD liquids are currently active in the Food and Drug Administration's PMTA process and have and are currently expending vast amounts of time and money seeking approval for their ESD liquids by the FDA. I can provide additional information on this issue upon request as it is quite relevant.

### III. Importance of legitimate access to flavors for adult ESD users

ESD products do not rely on combustion of leaf tobacco to work. Instead, a liquid solution is aerosolized by a heating element which makes the flavor experience, in both liquid and vapor form, remarkably different from that of the taste and smell of combustible tobacco products (before and after the actual burning of the product). This allows many adults to transition away from the deadly habit of smoking tobacco. ESD vapor does not even leave a lingering smell like that of smoke.

If all flavors were prohibited in the State of Maryland, the consequences could be severe to the health of these former adult smokers. Also, many people who vape report that tobacco flavored ESD liquids can act as a relapse trigger and, therefore, wish to vape flavors other than tobacco, including fruits and menthol. Flavors are the reason why ESD liquids work to help adult smokers switch from smoking traditional cigarettes. Most vapers find tobacco flavors unappealing and find unflavored liquid unacceptable. Specialized Vape Shops like my business rely heavily on the sale of flavored ESD liquid and, if Maryland consumers are unable to purchase flavored ESD liquid from reputable, licensed retail establishments, they will inevitably turn to the black market or attempt to manufacture their own liquid by buying the components online or elsewhere. E-liquid is not extremely complicated and black-market players and/or untrained and uneducated consumers could easily obtain the component parts, including flavorings, to illegally manufacture flavored e-liquid without an effective State law enforcement component. Of course, all our neighboring states would allow flavored ESD liquid. Even worse, many smokers will revert to smoking tobacco. This would only worsen the situation in that it would allow for more youth access, youth smoking and will create ESD liquid safety concerns.

Plus, as an emergency bill, it would give retailers no time to adjust and many would lose significant inventory and money. Furthermore, it is against the interest of public health to make these products inaccessible to former adult smokers in order to possibly make them less appealing to children. No legislation will keep children from mimicking forbidden adult behaviors regardless of flavor.

But, if this committee intends to move forward with a favorable report for Senate Bill 259, I urge you to amend the bill to include an exemption for adult-only specialty tobacco and vapor retailers. Vape shops, such as mine, act as the true "gatekeepers" against youth use. The proof is in the numbers. According to the FDA Compliance Check Inspection of Tobacco

Product Retailers (through November 30, 2019), out of 222 violations, not a single vape shop was cited for selling vapor products to underage consumers. Vape shops only sell ESD products and provide expert instruction and technical support to adults over the age of 21 who are transitioning from cigarettes. Due to these facts, vape shop owners take youth usage very seriously and are acting as a vital part of the solution. We must also consider that the Tobacco 21 laws have been effective which make these drastic measures, that basically constitute prohibition, highly unnecessary. If SB 259 becomes law, it will actually allow for more youth usage of potentially dangerous products in an unregulated black market with little to no State enforcement of the law. We must also look at this issue as compared to the recent legalization of marijuana in Maryland. I never thought that I would see the day when Maryland legalized marijuana the same year that they banned flavored nicotine delivered in a safer manner than smoking.

It is also relevant that this Committee has contemplated banning the indoor use of ESDs since 2010 and has declined to issue any favorable reports. Now, in the current climate, this Committee is contemplating whether to destroy the entire ESD small business community in Maryland. That is quite a leap. We are, also, like most other small businesses, seriously struggling during these unprecedented times.

#### V. Conclusion

I recommend that the Senate Finance Committee issue an unfavorable report for Senate Bill 259. 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.