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Written Testimony

To: Maryland House Economic Matters Committee
From: Ronald A. Ward Jr.
Date: March 5, 2024
Re: Opposition to Maryland House Bill 1414

I. Introduction

My name is Ronald Ward and I am a life-long resident of Maryland. I have been an Electronic Smoking Device (hereinafter "ESD") user for over 14 years, an ESDs advocate for over 12 years and have owned an ESD store (vape shop) in Baltimore County, MD for the past 10 years.

While I fully support reasonable regulation such as keeping these devices out of the hands of minors, this bill is contrary to the very intent of the Maryland Tobacco Control Act. It is also a Bill that would destroy an entire industry in this State through either taxation or what amounts to prohibition. I ask that you issue an unfavorable report for House Bill 1414 as it is written.

I am shocked and confused by the unfairness shown by Rep. Fair in attempting to raise the sales and use tax on ESDs from 12% to 30% retail for a product that has been shown to be far less harmful than smoking and helps adult smokers to switch from smoking to vaping. This Bill is basically identical to 2024 HB 238 and SB 234, in that it attempts to ban the indoor use of ESDs, but it sneakily adds an additional 18% sales and use tax and more.

At the end of the Bill, there is also a devastating provision in Section 16.7-207 (a) which would make it utterly impossible for ESD businesses in Maryland to lawfully operate by allowing the Executive Director to deny a license, or reprimand, suspend or revoke a license for selling and ESD is not approved by the FDA. The FDA is still rigorously processing applications and, to this date, only a handful have successfully navigated the process. It must be noted that big tobacco companies have a lion's share of those approvals. It seems as though the big tobacco companies wish to destroy vaping so that they can go back to making obscene profits from deadly combustible tobacco.

What the sponsor of this Bill fails to realize is that, if this Bill passes, there will be no collectable sales tax for ESDs due to the fact that legitimate retailers, wholesalers, manufacturers, etc. will not be able to sell their products. In that sense, this Bill makes absolutely no sense and shows how little the drafters actually know about the ESD industry.

II. The Industry, Regulation and Maryland Legislative History

The State of Maryland first introduced legislation that would ban the indoor use of these products in 2010 and in 2014. The bill in 2010 died in committee and the bill in 2014 was voted down handily in committee.

(http://mgaleg.maryland.gov/2014RS/votes_comm/hb1291_ecm.pdf).

In 2010, the first bill attempting to ban the indoor use of ESDs was SB 989 (<http://mgaleg.maryland.gov/2010rs/bills/sb/sb0989f.pdf>). No action was taken on this bill as it never got past a first reading.

In the 2014 legislative session, one bill was proposed that directly affected e-cigarettes and two that dealt with smokeless tobacco. The Bill was HB 1291 (<http://mgaleg.maryland.gov/webmga/frmMain.aspx?id=hb1291&stab=01&pid=billpage&tab=subject3&ys=2014RS>) (<http://blog.casaa.org/2014/02/call-to-action-maryland-e-cigarette.html>) which would have redefined vaping as smoking for purposes of the Clean Indoor Air Act. This very committee handily rejected that bill, which is almost identical to the subject bill, by a vote of 15-3.

Yet, the sponsor of the bill reintroduced it again in 2015. That bill (HB 26) was just as flawed in its language and rationale as was HB 1291 and, again, this committee issued an unfavorable report.

<http://mgaleg.maryland.gov/webmga/frmMain.aspx?id=hb0026&stab=01&pid=billpage&tab=subject3&ys=2015RS>.

In 2017, HB 354 yet again attempted to reintroduce this legislation. Again, the bill never made it out of this Committee.

In 2019, the legislation was reintroduced before this Committee in the form of House Bill 27 and, yet again, died in Committee.

As you can see, over 14 years of proposed indoor use bans of ESDs at the State level were handily rejected or tabled pending further research. The only jurisdictions to ban the indoor use of electronic cigarettes in MD without any hard evidence of second hand (or even first hand) harm, are Montgomery County, Prince George's County and Howard County. In 2014, Baltimore City came to a landmark compromise allowing the use of ESDs in places where adults congregate. These areas were exempt from the indoor use ban if they prominently displayed

signs alerting their patrons that the use of electronic cigarettes is allowed in their establishments (Bill 14-0371)<http://legistar.baltimorecitycouncil.com/attachments/11532.pdf>.

Then, as it pertains to taxes, House Bill 732 became law under Article II, Section 17(d) of the Maryland Constitution as Chapter 37 of the Acts of 2021. The sales and use tax rate for ESDs in Maryland then went from 6% to 12%.

III. Proposed legislation

I respectfully request that this Committee issue an unfavorable report for HB 1414 because the bill treats ESDs as if they were traditional cigarettes. It imposes indoor use bans and imposes an insurmountable tax for small businesses. Then, it contains language that basically bans the lawful sale of ESDs in Maryland. This would only drive a legitimate and highly regulated business into the hands of unscrupulous online retailers, criminals and cartels. Furthermore, this bill is contrary to the legislative intent of the Clean Indoor Air Act itself (see sections 24-502 and 24-503 of the Act) and shows a fundamental misunderstanding of the industry it wishes to regulate. Through that ignorance and confusion arises the likes of this Bill. I am more than willing to meet with any member of this Committee to discuss the lack of knowledge, inadequate language and poor drafting of this proposed legislation in detail.

For some background as to the FDA's role in this situation, the FDA PMTA process has been fraught with problems since its inception. It is disorganized, expensive and completely unfair. Also, it is a process that, at this time, is far from complete. Furthermore, the FDA has arbitrarily denied marketing orders for over 1 million products and is failing to move forward with authorizing hundreds of thousands of other products.

The process is so flawed that a United States Court of Appeals recently ruled that the process, for many reasons, is "arbitrary and capricious". Therefore, they remanded to the FDA in order for the agency to correct these serious problems with the PMTA process. There are also hundreds of thousands of applications that have not been reviewed. Of course, many companies have filed suit against the FDA and there are more to come in the future. Therefore, this proposed legislation is not ripe. Passage of this Bill would all but eliminate the small business owners in this mom-and-pop industry.

VI. Conclusion

I recommend that the House Economic Matters Committee issue an unfavorable report for House Bill 1414. It makes absolutely no sense to pass legislation based upon the mere possibility of harm despite very promising and positive research data to date regarding ESDs. As stated previously, the remaining provisions pertaining to taxation and licensing are completely unfair and based on a fundamental misunderstanding of the complexities of this issue. Therefore, I urge the Committee to issue an unfavorable report for HB 1414.

