

MARYLAND RETAILERS ALLIANCE

The Voice of Retailing in Maryland



**HB1033 Business Regulation - Electronic Smoking Devices Manufacturers –
Certifications
Economic Matters Committee
February 20, 2024**

Position: Unfavorable

The Maryland Retailers Alliance (MRA) has serious concerns about the overall impact of a slate of proposals introduced this year regarding tobacco sales. It appears that the legislature intends to use regulation as a vehicle for removing tobacco from the state through a combination of policies including high tax rates and retail sale prohibitions. We have chosen to address several bills in one document as these bills are scheduled to be heard in separate committees and on separate dates, and we want to ensure that each body is considering the full scope of these proposals and the impact of these policies as a package rather than passing them in a vacuum.

Our membership does not disagree with an intent to address minors' use of illegal products, but the manufacturing and sale of tobacco products is already a highly regulated industry. Age-restriction laws are in place to keep these items out of the hands of children, and consumers in Maryland face some of the highest taxes on tobacco in the country at \$3.75 per pack of 20 cigarettes – higher than all of our neighboring states: Virginia (\$0.60 per pack), West Virginia (\$1.20 per pack), Pennsylvania (\$2.60 per pack), Delaware (\$1.20 per pack), and even Ohio (\$1.60 per pack), North Carolina (\$0.45 per pack), and New Jersey (\$2.70 per pack).

Restricting or prohibiting the sale of products is often well-intentioned and seems like the simplest solution to curb tobacco use: ban or make it difficult for tobacco customers to buy their preferred products, and they will stop using them. We know from cases around the country where governments have passed local flavored tobacco bans that this is not the case. Customers who cannot conveniently purchase these products in Maryland will go to another state to buy the items that they are looking for. There are over 1,600 tobacco retailers within ten miles of Maryland's border in neighboring jurisdictions and no Marylander lives farther than 35 miles from a tobacco retailer across the state line. Users who face a barrier to travel will simply get their products online or illegally from the black market.

We support a regulated industry, and that includes making sure that the products that are available to customers are vetted items. Efforts to curb use that could result in increased black market activity may be detrimental to the health of adult consumers of tobacco products, and we would respectfully urge the Committees to strongly consider this when discussing these bills.

HB1033/SB987 Business Regulation - Electronic Smoking Devices Manufacturers – Certifications

HB1033 would require the establishment of a directory of electronic smoking devices that have been approved for sale by the Food and Drug Administration (FDA), ostensibly in an effort to reduce the proliferation of illegal products in the market. We do not oppose the goal of this legislation but there are issues with the bill as proposed.

The directory created by HB1033 would allow the sale of products that have already received approval for sale by the FDA but the bill does not include any statutory requirement to update the directory as new products are approved. This omission fails to address products that were submitted for federal consideration by the September 9, 2020 deadline but which have not yet received a final decision from the FDA.

A separate bill being considered this year, HB1197, proposes a similar directory but requires the Office of the Attorney General to update the directory as needed in order to correctly reflect approved products. Our members have expressed a preference for HB1197 over HB1033 due to this difference.

We would urge an unfavorable report on HB1033.

HB844/SB582 Business Regulation - Cigarette, Other Tobacco Product, and Electronic Smoking Device Retailers - Nicotine Replacement Therapy Products (Make Quitting Convenient Act)

HB844 would require any retailer that sells tobacco products to also sell nicotine replacement therapy products and to post signage in stores. It is inappropriate for the legislature to mandate that retailers carry specific products and to even establish parameters around ordering and stocking timelines, which can vary widely between individual business practices.

In addition to this overreach, the signage requirements in HB844 would be burdensome for businesses. “Real estate” space for notices and signs in stores is a tight market, and customers are already overwhelmed with signs on a multitude of topics in aisles, at the entrance of stores, and at the point of sale, especially in stores like pharmacies, grocery stores, and convenience stores that sell a wide variety of items. A federal order already exists which mandates that businesses post signage about the dangers of smoking, and this should be sufficient to suggest changes to consumer behavior.

We would urge an unfavorable vote on HB844.

*HB1197 Business Regulation - Electronic Smoking Devices Manufacturers –
Certifications*

HB1197 would require the establishment of a directory of electronic smoking devices that have been approved for sale by the Food and Drug Administration (FDA), ostensibly in an effort to reduce the proliferation of illegal products in the market. Unlike HB1033, HB1197 would require that the directory be updated to reflect products that have been newly approved for sale by the FDA, as many items were submitted for review by the federal deadline in 2020 but have yet to receive final determination. A similar bill was recently passed in Virginia and HB1197 would create a consistent market between Maryland and our close neighbor, decreasing the likelihood of consumers crossing the state line in search of specific legal products. Our members have expressed a preference of HB1197 over HB1033 for these reasons.

We would support a favorable report on HB1197.

*HB1180/SB1056 Cigarettes, Other Tobacco Products, and Electronic Smoking Devices -
Revisions (Tobacco Retail Modernization Act of 2024)*

HB1180 would, among other things, prohibit retailers with a pharmacy permit from selling tobacco products. As a proponent of the free market, we strongly oppose this prohibition which would restrict access to legal, regulated products for purchase by consenting adults. This is of extremely serious concern to not only our retail chain drug stores but also grocery stores in Maryland that provide a pharmacy counter in their community. It is unclear in the bill whether this prohibition on sales in pharmacies would apply only to the pharmacy area in grocery stores, or if retailers would be restricted from selling any tobacco products anywhere in a store that also includes a pharmacy counter.

Marylanders are accustomed to being able to buy a variety of goods outside of the primary categories of food and medicine at both grocery stores and pharmacies, with retail pharmacies often meeting consumer needs by operating as a small general store in many communities. As noted in our introduction, restricting access to legal products may only drive consumers to shop in jurisdictions outside of Maryland or to purchase their desired items through illegal, unregulated channels. We strongly oppose this proposal and believe that it would harm the business community in Maryland without effectively reducing tobacco use in the state.

We would urge an unfavorable vote on HB1180.

HB1073 Tobacco Tax - Cigarettes - Rate Alteration

HB1073 would increase the sales tax rate on cigarettes from \$3.75 per pack of 20 cigarettes to \$4.50 per pack, and from 17.5 cents per cigarette in a larger pack to 22.5 cents per cigarette. As noted in our introduction, Marylanders already pay a higher tobacco tax than consumers in any of our immediately neighboring states and beyond, and can reach cigarette retailers in any of those states by driving less than 40 miles. This

regressive tax would primarily impact tobacco use for consumers who cannot travel even that simple distance, and could result in higher sales in the black market rather than any actual reduction in tobacco use. Increasing the tax on cigarettes by almost \$1.00 per pack would increase “border bleed” sales and harm businesses by greatly increasing the price of legal, regulated products for adult consumers.

We would urge an unfavorable report on HB1073.

HB1414 Electronic Smoking Devices - Licensure, Indoor Use, and Taxation – Alterations

HB1414 would, among other things, increase the sales tax rate on electronic smoking devices from 12% to 30%. As noted in our introduction, regressive tax increases such as this merely encourage consumers to cross Maryland’s very close borders to purchase their desired products. Increasing prices as a method to encourage a change in consumer behavior is inappropriate for these items, as is using the consumption of certain products as a method of increasing tax revenue. Increasing this tax would harm businesses and increase prices for legal items for use by adults in Maryland. Other bills have been introduced which would update the Clean Indoor Air Act to restrict the indoor use of electronic smoking devices, and which have not been opposed by MRA.

We would urge an unfavorable report on HB1414.