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February 21, 2025

TO: The Honorable C.T. Wilson
Chair, Economic Matters Committee

FROM: Anna MacCormack
Assistant Attorney General, Office of the Attorney General

RE: House Bill 1241 – Business Regulation – Other Tobacco Products and
Electronic Smoking Devices – Seizure and Wholesaler Licensure
Requirements

The Office of Attorney General urges this Committee to report favorably with amendments on House Bill 1241 – Business Regulation – Other Tobacco Products and Electronic Smoking Devices – Seizure and Wholesaler Licensure Requirements.

HB 1241 includes changes to the Other Tobacco Products (“OTP”) that would improve the current law. These changes include granting the Maryland Alcohol, Tobacco, and Cannabis Commission (“ATCC”) or a peace officer authority to seize OTP that violates Title 16.5 without a warrant; providing a process for the return of seized OTP if there was no violation; and authorizing the ATCC to impose and collect costs of transportation, seizure, and disposal of seized OTP. The Office of the Attorney General (“OAG”) supports these changes.

The OAG believes the changes HB 1241 proposes for existing ESD law would be improved through amendments that would make this Bill more effective. As written, HB 1241 creates a third type of ESD wholesaler license, in addition to the existing licenses for ESD wholesaler distributors and ESD wholesaler importers. This new wholesaler license is much broader than the other two wholesalers and has fewer restrictions. Crucially, the Bill does not eliminate the

license exemption contained in Md. Bus. Reg. § 16.7-102, meaning existing cigarette or OTP wholesalers can continue to operate as ESD wholesalers without an ESD license.

HB 1241 adds a requirement that the new ESD wholesaler licensees must retain and create certain business records, but the Bill does not mandate that the wholesalers provide reports or returns to any State agency using these records. Further, HB 1241 makes these records available only to the ATCC, and does not explain how or when the ATCC would have reason to examine the records. Notably, the Comptroller, Department of Health, or OAG are not authorized to access these records. Additionally, HB 1241's new requirements apply only to the new ESD wholesaler licensee, a feature that may discourage businesses from getting the new license to avoid any such onerous record-keeping requirements.

HB 1241 authorizes the ATCC to seize ESDs sold or offered for sale in violation of Title 16.7 without a warrant, provides a process for the return of seized ESD if there was no violation, and authorizes the ATCC to impose and collect costs of transportation, seizure, and disposal of the ESDs it seizes. Although this explicit grant of authority to seize ESDs is a welcome clarification of the ATCC's power, HB 1241 does not provide the ATCC with a clear legal basis for using this power, as only the Department of Health is currently authorized to inspect ESD retailers. Because there are only a few grounds for violating the current law governing ESDs, primarily concerning use of the license, and there is already a process for notice and hearings provided in the existing law, SB842 is largely duplicative of current law. Nor does it provide any substantive basis the ATCC may rely on to exercise its new ESD seizure authority, severely limiting the impact of that authority.

The OAG accordingly would recommend the following amendments:

- Require that all ESD businesses that manufacture, distribute, or sell ESDs in Maryland obtain an ESD license.
- Eliminate the ESD license exemption in the existing law, Md. Bus. Reg. § 16.7-102.
- Eliminate the internet sales loophole for ESD manufacturers, Md. Bus. Reg. §§ 16.7-101(d)(2)(i) & 16.7-204(a)(1)(iv).
- Require the licensed ESD manufacturers sell only to licensed ESD wholesaler distributors or licensed ESD wholesaler importers, and that licensed ESD retailers and vape shop vendors only purchase ESDs from licensed ESD wholesalers.
- Authorize the ATCC to conduct unannounced inspections of licensed ESD businesses.
- Authorize the Maryland Department of Health to refer violations of the law to the ATCC for further enforcement.
- Create a system to authorize ESDs for sale in Maryland so that only authorized products may be legally sold in the State. Unauthorized ESDs should be deemed contraband and the ATCC may seize and dispose of such products.

- Require regular reporting of ESD sales to the State to enable the State to track the products sold and ensure collection of all taxes.
- Authorize the Comptroller and OAG to access the records of ESD sales.
- Add a personal use exception to the violations section for ESDs so that an individual with less than \$100 of unauthorized ESDs for personal use will not be penalized.

For the foregoing reasons, the Office of the Attorney General urges a favorable with amendments report on House 1241.

cc: Committee Members