

Maryland Vapor Alliance

HB1441 - Oppose

Chair Wilson and Honorable Members of the Committee:

On behalf of the **Maryland Vapor Alliance**, which represents small business vape shops throughout the State of Maryland, we are writing to **strongly oppose HB 1441, *Business Regulation – Electronic Smoking Devices Manufacturers – Certifications***. We share the goal of keeping tobacco and vaping products out of the hands of minors and ensuring consumer safety. However, as small business owners, we have serious concerns that HB 1441's approach will **unintentionally harm lawful small businesses, eliminate products that adult ex-smokers rely on, and reduce state revenue**, without effectively addressing the root issues. Below, I outline our key concerns and suggest alternative solutions.

Uncertainty in the Product Certification Process

HB 1441 would create a new **product certification and directory system** for vapor products. Unfortunately, the process as written is **ambiguous and unpredictable**, leaving small vape shops in constant doubt about which products we will be allowed to carry:

- **Subjective Approval Criteria:** The bill empowers the Attorney General to decide which products get listed on a state “approved products” directory based on broad criteria. Manufacturers must submit extensive annual certifications for each product, including marketing plans and even product samples. The Attorney General can refuse to list a product if, for example, it is deemed “**intended to appeal to youth**” or if it might “**disguise or misrepresent the nature of the product.**” While we absolutely agree that products should not target youth, these standards are **highly subjective**. The bill provides no clear definitions for what “appeals to youth” or “misrepresents” a product. This means a flavor or package design could be barred on the **uncertain interpretation** of regulators. Small businesses have no way to predict which of our inventory items might suddenly be prohibited under such subjective rules.
- **Lack of Clarity on Allowed Products:** As of today, **very few vaping products have full FDA marketing authorization** (on the order of only a couple dozen nationally), and those tend to be products made by the largest tobacco companies with very high nicotine levels. Many reputable vaping products are still awaiting FDA review, have pending applications, or tied up in litigation. HB 1441 does not clearly state whether products with pending federal applications would be allowed, or if only fully FDA-authorized products can be sold. This ambiguity is alarming. If the intention is to only allow FDA-authorized products, it could **wipe out the majority of vapor products currently on the market**. Even if pending products are allowed temporarily, the backlog in the FDA process means **continued uncertainty** for years to come. We, as small retailers, literally do not know if the products we sell today will be legal to sell next month or next year under this bill.
- **Timing and Administrative Burden:** The bill requires manufacturers to submit certifications by June 30 each year, after which the state will update the directory of

permitted products. It is unclear how quickly this directory will be published or updated, or how changes will be communicated. If a manufacturer misses the deadline or a new product comes to market mid-year, will shops have to pull those products from shelves immediately? The **fluid nature of the vapor market** – where adult consumers often seek new and improved products – is at odds with a rigid yearly certification. The likely result is **fewer available products** and constant last-minute changes. Small shops lack the compliance departments of big companies; we cannot navigate such a complicated process without mistakes. We fear inadvertent violations if a product we stock falls off the approved list without our knowledge. This uncertainty alone could drive many of us to drastically cut our product offerings or even close our doors.

In summary, the **ambiguity in HB 1441's product certification process creates an unpredictable business environment** for Maryland vape shops. We risk being in compliance one day and out of compliance the next, through no fault of our own, simply because of an opaque approval process. This is a frightening prospect for any small business owner.

Economic Impact on Small Businesses and State Revenue

Beyond the procedural uncertainties, HB 1441 poses a direct threat to the **economic viability of Maryland's small vape shops** and could significantly **reduce tax revenues** for the state:

- **Inventory Losses and Financial Strain:** If many products are denied certification and removed from the marketplace, vape shops will be left with **unsellable inventory** that we have already paid for. Our customers will have fewer choices, leading to **lower sales**. Unlike big chains, independent vape shops specialize in these products – if we cannot sell the top-selling e-liquids or devices that our adult customers want, we cannot simply fall back on other merchandise. The result will be severe revenue declines for our stores. Many of us operate on thin margins; a sudden removal of even 20-30% of products could turn a profitable shop into one that can't pay its rent and employees. It's no exaggeration that some shops would likely **go out of business**, costing Maryland jobs and community-serving small businesses.
- **Loss of Tax Revenue for Maryland:** Reduced sales don't just hurt shop owners – they hurt the state's budget. Maryland imposes a special sales tax on electronic smoking devices (currently **20% on most vaping products, and 60% on certain smaller containers** of vaping liquid). In other words, every legal sale of a vape product contributes extra tax dollars to Maryland's general fund. If HB 1441 leads to products being banned or consumers turning away from legal purchases, the state will lose significant revenue. The Department of Legislative Services acknowledged this in a recent bill analysis: **any measure that reduces the amount of vaping products sold will cause a decrease in state tax revenues**. Statewide, the loss of sales due to product restrictions could easily amount to **multiple millions of dollars in lost tax revenue annually**. This comes at a time when Maryland is also working to fund important programs; we should not inadvertently create a budget hole.
- **Unfair Competition and Black Market Risk:** If Maryland restricts products that neighboring states allow, consumers might **cross state lines or go online to buy** their preferred vaping products. That means Maryland businesses lose out to out-of-state

retailers. Even more worrisome, history shows that when legal, regulated products are too limited, **black markets thrive**. We saw this with the prohibition era and more recently with high tobacco tax differentials. Customers desperate for a specific vape device or flavor that isn't on Maryland's "approved" list may seek out informal or unlicensed sellers. Those illicit sellers won't adhere to age checks or pay Maryland taxes. Driving sales underground is dangerous for consumers and deprives the state of revenue. As a lawful retailer, I have every incentive to keep age-restricted products out of minors' hands and to follow safety regulations. But I cannot do that job if my business is undercut by an unregulated market spawned by overly broad prohibitions.

In short, the economic fallout of HB 1441 could be severe. **Small businesses will suffer or shutter**, employees will lose jobs, and Maryland will lose tax income that currently funds public services. All of this pain comes without clear evidence that the bill will achieve its public health goals more effectively than existing laws.

Consumer Choice and Harm Reduction for Adults

Perhaps our greatest concern is that HB 1441, though well-intentioned, will **significantly reduce adult consumers' access to the very products that have helped many of them quit smoking** – a goal that we all share. It is crucial to remember that **vaping products are not equivalent to cigarettes**; for many adult smokers, they are a **harm reduction tool** and a lifesaver. Here's why consumer choice must be preserved:

- **Vaping as a Less Harmful Alternative:** Extensive research has found that **vapor products are far less harmful than traditional combustible cigarettes**. Notably, Public Health England (the UK health agency) concluded that **e-cigarettes are around 95% less harmful than smoking**. While vaping is not risk-free, the **absence of tar and combustion** means dramatically lower levels of carcinogens and toxins. For a lifelong smoker who cannot quit nicotine easily, switching to vaping can literally be a life-changing improvement in health risk. Our customers include middle-aged and senior citizens who had smoked for decades and finally quit cigarettes by transitioning to vaping. **Those success stories depend on having the right flavor or nicotine strength that works for that individual smoker.**
- **Importance of Flavor Variety and Product Diversity:** A key to vaping's success as a cessation aid is that it is **not one-size-fits-all**. Adult vapers have different preferences – some need a tobacco flavor initially, others can only stay away from cigarettes if they find a pleasant flavor like mint, fruit, or vanilla that replaces the taste of burning tobacco. Many customers also gradually step down their nicotine levels using refillable devices and liquids that come in various strengths. By potentially **eliminating most flavored or innovative products**, HB 1441 would force all vapers into a very narrow selection (possibly only tobacco-flavored, high-nicotine products made by a few big companies). This would be a disaster for public health. **For many ex-smokers, if their chosen vape flavor or product is taken away, they will relapse to smoking** – a far more dangerous outcome. In fact, studies of tobacco control have warned that **punitive restrictions on vaping can push vapers back to cigarettes**, negating harm reduction gains. A recent analysis in Minnesota found that thousands of smokers did **not** quit cigarettes as expected

when a 95% tax hike made vaping more expensive – they stuck with smoking instead ([Vaping Taxes by State, 2023 | E-Cigarette and Vape Tax Rates](#)). We risk the same backfire effect here: by making vaping products scarce or unappealing, some adults will return to deadly combustible tobacco.

- **Consumer Rights and Informed Choice:** Adult consumers should be treated as capable of making informed choices about **legal products for their health**. Maryland has already taken strong steps to prevent youth access (the minimum age is 21, and retailers must be licensed). Those who oppose vaping often conflate adult use with teen use. But we must acknowledge that **for adult smokers trying to quit, vaping is a legitimate and often doctor-recommended option**. Even the FDA recognizes a “continuum of risk” for nicotine products – with cigarettes at the most harmful end and alternatives like nicotine patches, gum, and yes, vaping, at the less harmful end. If HB 1441 implementation ends up removing flavored nicotine vapes, it would effectively deny adults a choice of a reduced-risk product, even as cigarettes remain freely available on every corner. This does not make sense from a public health perspective: it would be a tragic irony to make it easier to buy a pack of Marlboros than to buy a flavored vape that helped someone quit Marlboros.

In summary, **consumer choice is not a luxury in this context—it is an essential component of tobacco harm reduction**. We urge you to consider that HB 1441’s restrictive approach could undermine years of progress in reducing smoking rates, by unintentionally pushing former smokers back to a far more harmful habit.

Alternative Regulatory Measures

We firmly believe there are **better ways to regulate vaping products** and address public health goals **without crushing small businesses** or limiting adult consumer options. Rather than the heavy-handed product directory in HB 1441, we propose the committee consider the following alternative approaches:

- **Enforce Existing Age Restrictions and Licensing:** Maryland already has strong laws prohibiting sales to minors (under 21) and a licensing system for vape retailers. The focus should be on **strict enforcement of these laws**, including regular compliance checks and hefty penalties for any retailer that sells to youth. By directing resources to enforcement, we can target the bad actors who break the law, **without burdening legitimate businesses**. In fact, last year the legislature discussed increasing fines and mandatory license suspensions for selling to minors – measures we support. Ensuring every retailer is following ID check laws will do far more to curb youth vaping than a complicated product registry.
- **Collaboration with Industry for Clear Standards:** A constructive alternative would be to work *with* responsible manufacturers and retailers on **clear marketing and packaging standards**. For instance, the state could prohibit packaging that mimics children’s cartoons or candy brands (many reputable companies already avoid this), require clear labeling of nicotine content, and ban any advertising that explicitly targets underage audiences. These standards would directly address youth appeal concerns without requiring each product to be individually blessed by the Attorney General. Small

businesses would know the **rules of the road upfront** – e.g., no unicorn cartoons on bottles, no names like “cotton candy” – and could avoid stocking products that violate those rules. This approach sets **bright-line rules** instead of case-by-case decisions. It would be far more workable for us and still achieve the goal of keeping kid-attractive packaging off the shelves.

By adopting these alternative measures, Maryland can **strike a balance** – protecting youth and public health while also preserving a pathway for adult smokers to quit and allowing small businesses to survive. Other states are grappling with this same challenge. Notably, some are focusing on strengthening age verification and penalizing retailers who knowingly sell illegal or unapproved products, rather than imposing broad product bans. This balanced strategy recognizes the concept of **harm reduction**: it’s more effective to reduce the harm of smoking by guiding smokers toward safer alternatives than to attempt an outright elimination of those alternatives. In the long run, encouraging smokers to switch to regulated vaping products (and then perhaps to no nicotine at all) will save more lives than creating strict new prohibitions that might drive them back to cigarettes.

Conclusion

In closing, I urge the committee to **consider the real-world consequences** that HB 1441 would have on Maryland’s small business vape shops and the customers we serve. The bill’s **uncertain product certification process** would leave us guessing what we can stock, threatening our livelihoods. Its implementation would likely **wipe out many products**, resulting in substantial **lost revenue for the state** and the **closure of local businesses**. Most importantly, it would deprive adult ex-smokers and smokers trying to quit of the **diverse choices of vaping products that have been proven to help reduce tobacco-related harm**.

We all support sensible regulation to keep these products away from youth and to ensure safety and quality. But HB 1441, as written, overshoots that mark and risks doing more harm than good. As a small business owner on the front lines, I can attest that our industry is willing to work with lawmakers on smart regulations. Worse yet, public health experts caution that such measures could **undermine smoking cessation efforts** by removing reduced-risk alternatives and pushing people back to smoking.

Maryland has an opportunity to be a leader in **balanced tobacco control policy**. We can **protect youth, sustain harm reduction for adults, and keep our small businesses open** all at the same time. I respectfully ask you to reject HB 1441 in its current form and consider more effective, balanced approaches as outlined above. Let’s craft a solution that addresses the real problems (youth access and illicit products) **without sacrificing the health of former smokers or the survival of lawful small businesses**.

Thank you for your time and consideration. I am happy to answer any questions and to work with lawmakers on better solutions. Maryland’s vape shop owners stand ready to be partners in reducing smoking and youth vaping – we ask only that you not regulate us out of existence in the process.

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