

Ronald A. Ward Jr., Esq.
Owner
The Vapers' Edge
8116-A Harford Road
Parkville, MD 21234
443-725-5251
thevapersedge@gmail.com

Written Testimony

To: Maryland Senate Finance Committee
From: Ronald A. Ward Jr.
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Re: Opposition to Maryland Senate Bill 918

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 15 years, an ESD advocate for over 13 years and have owned an ESD store (vape shop) in Baltimore County, MD for the past 11 years.

II. Overview of Senate Bill 918

SB 918 proposes an effective prohibition on virtually all vaping products currently on the market. It is the product of big tobacco companies looking to take over the ESD market, sell more cigarettes and make ESD products essentially unavailable. This would also allow the big tobacco companies, bad actors and illegal online retailers to hijack the industry. That is due to the fact that Senate Bill 918 demonstrates a fundamental misunderstanding of the industry that it seeks to regulate.

On its face and even without the benefit of an existing Fiscal Note which as of today, it is evident to anyone who understands the ESD industry that this Bill would have a devastatingly negative economic impact on ESDs businesses, the State and its revenue. The fiscal analysis must calculate both sides of the balance sheet. The State must account for the tens of millions of ESD revenue that it will lose to this legislation. In addition, it would place an unfeasible, ineffective and fiscally irresponsible burden on State agencies. SB 918 would create an unworkable Law that would eliminate Maryland ESD revenues.

III. Big Tobacco Interests and the Black Market

There is a reason why Altria—America’s largest cigarette company—is such a fervent advocate for registries or “certification”, as it is named in this Bill. Those very companies blamed ESDs for causing their cigarette sales to decline faster than anticipated. Altria's advocacy suggests a strategic interest in making quality vaping products less accessible, leaving only their products on the market; driving adults back to smoking cigarettes and/or leading to a larger, already existing, black and grey market.

Actually, the big tobacco company lobbyists have been shopping this legislation in most of the country for two or more years. They attempted to achieve passage of a similar Bill last session. They have also been shopping Offices of the Attorney General in a number of States, including Maryland, to create ESD Registries. This is nothing more than an attempt to destroy the existing ESD industry in Maryland in favor of a handful of big tobacco ESD products. Keep in mind that big tobacco companies derive a very small percentage of their profits from the sale of ESDs. Furthermore, the big tobacco companies have already admitted that ESDs are significantly cutting into their cigarette profits. Therefore, the utter elimination of their competition in the ESD market would benefit their deadly cigarette and very small ESD business. Also, make no mistake, this Bill might look different from last year's version, but it has the same effect desired by big tobacco.

One particular section of the Bill illustrates how it completely favors the interests of big tobacco. Section 16.7-306(A)(1) requires that, before inclusion, an ESD manufacturer shall deposit and maintain \$75,000.00 in an escrow fund. This would, in effect, price out just everyone in the industry, but for big tobacco, who have the deep pockets to afford this cost.

This Bill would devastate mom and pop Maryland Vape Shop businesses, eliminate nearly all ESDs from the legitimate market, expand an existing ESD black market, allow bad actors in the industry to run amuck which creates a situation forcing former smokers back to the deadly habit.

IV. FDA PMTA Implications

In Section 16.7-302(c)(3), page 12 line 32 to 33, and pages 13 lines 6 to 8, of this Bill:

“(C) AN ELECTRONIC SMOKING DEVICES MANUFACTURER SHALL FURTHER CERTIFY THAT THE ELECTRONIC SMOKING DEVICES MANUFACTURER:

(3) IS IN FULL COMPLIANCE WITH ALL APPLICABLE LOCAL, STATE AND FEDERAL LAWS REGARDING THE MANUFACTURE AND SALE OF ELECTRONIC SMOKING DEVICES”.

This section acts as an industry killing catch-all that subjects certification of ESDs in Maryland to the Federal law, namely making it subject to the FDA Pre-Market Tobacco Application (hereinafter “PMTA”) process. As stated previously, Senate Bill 918 is no different than last year's House Bill 1033.

The FDA PMTA process has been fraught with problems since its inception. Additionally, it is a process that, at this time, is far from complete. The FDA process is so flawed that the Fifth Circuit United States Court of Appeals recently ruled that the process, for many reasons, was “arbitrary and capricious”. Therefore, they remanded to the FDA in order for the agency to correct these serious problems with the PMTA process. That case was granted a Writ of Certiorari by the United States Supreme Court. Oral arguments were heard in December of 2024. Many companies have subsequently filed suit against the FDA and there are more to come

in the future. Therefore, this proposed legislation is premature as the Courts have yet to provide clarity on this issue.

V. Conclusion

Thank you for considering my testimony. For the reasons set forth above, I recommend that the Senate Finance Committee issue an unfavorable report for Senate Bill 918. Before voting favorably for this Bill, I invite the members of this Committee to investigate the negative public safety, criminal and serious fiscal implications of the Bill. If this Committee has any inquiries or requests for supporting documentation, please feel free to contact me and I will promptly provide said documents. I would also appreciate a conversation with any member of this Committee or their staff regarding SB 918.